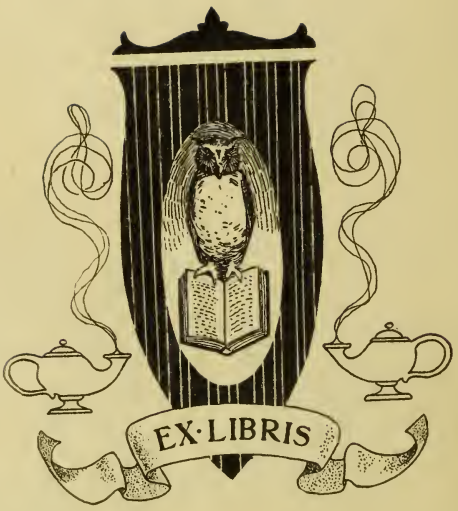
THE QUESTION BEFORE CONGRESS

Mitchell



S. G. & E. L. ELBERT

THE QUESTION

BEFORE CONGRESS

A CONSIDERATION OF THE DEBATES
AND FINAL ACTION BY CONGRESS
UPON VARIOUS PHASES OF
THE RACE QUESTION IN
THE UNITED STATES

By GEO. W. MITCHELL

THE A. M. E. BOOK CONCERN
PHILADELPHIA, PA.

Contents

CONTENTS

CONTENTS

Contents of Appendixes

Foreword

It is difficult for one to write an unbiased history of the events in which he himself took part. And the cold, unvarnished truth, whether told by the historian or otherwise, is seldom popular. Most popular histories, therefore, are written, not to record the truth as it is found, but rather to boost or to disparage the memory of some party or cause. Being desirous of learning the truth concerning the events of which this volume treats, and finding that the historians differed widely among themselves in many particular cases, the author was led to examine the original records of Congress page by page. A few of the notes taken in connection with this reading have been put in the shape of the following pages and offered as a contribution to the literature on this particular subject to any who may be interested in knowing the whole truth as we found it. "Nothing to extenuate, and set down naught in malice."

G. W. M.

Introduction

The world has always had a so-called race question, which is but another name for the struggle on the part of one mass, class or individual for mastery over another, or the attempt to adjust relations to their mutual advantage while striving to achieve group ideals. The history of the world is but the story of this struggle which is hoary with age, yet always new, because the old oppressor of to-day becomes the latest victim of to-morrow. Perhaps it is putting it a little strongly to speak of oppressor and oppressed; it might be fairer to say that the never-ending battle is between those in power and those seeking to dislodge them; and, after all, the man on top occupies the more precarious position for the reason that his sleepless antagonist beneath will surely get the upper hand some day, as there is no way for him to move but upward; and move he must or be ground to pieces and disappear, which is itself movement. All the great nations have what we call a race problem due to the presence of so-called foreign elements in their midst. England has its Irishmen; France, its Jews; Germany, its many branches of broken races; Russia, its Poles and Jews. The statute books are filled with laws expressive of the aims of one element to maintain first place and of another to resist encroachments upon what it regards as its rights. Each side has its champions in legislative halls or upon the hustings and the record of their combats constitutes the history of the times. For, however crude the age or however barbarous and strong the master class, the oppressed have never been without a champion. Slavery is universally regarded as the lowest position a man can occupy in human society. Three hundred years ago, this institution in the eyes of many in possession of power, did not seem monstrous nor even altogether unkind.

The desire to live is common and overwhelming. Ease and comfort seem to hold out the alluring promise of long life, and philosophical or religious sentiment has never been sufficiently universal or strong enough to prevent men from seeking the good things of life at any cost. Those who confederate in this search can see no wrong in what they may do to others provided the desired end is accomplished. The pious New Englanders were wont to thank God that they were able to save some "Negro and Indian heathens from the devyl by making slaves of them." That these were more or less genuine efforts at benevolent assimilation in the first instance, in view of the privileges and immunities extended to those who were baptized, may be admitted. Nevertheless, as we now look back, we regard these notions as crude and entirely out of harmony with our modern views of Christianity. But they were a Bible-reading people—these New Englanders—and doubtless believed that they had cornered the very heathen which the Bible speaks of as being "given as their possession." With such texts upon their lips in connection with the scarcity of labor, their relish for benevolent assimilation was kept sharp. The Indians absolutely refused to enter into the scheme and took to the woods; and the baptized Negro was far from being happy. This, however, made but little difference, as it was regarded as mere heathen ingratitude. Then again, these masters themselves had been accustomed to tyranny. Many of them were only now fleeing from a condition in Europe bordering on slavery. They had been used to seeing the poor and weak abused by the powerful. With scant supplies, they had just pitched their tent in this trackless forest. Force and strength of arms were the only capital that had any real value. Under such conditions the social pet is the giant who is able to defend his hut against all comers. The ethics of the school-man become ridiculous.

The Puritan panting for religious liberty, the pioneer thirsting for political freedom, the adventurer in search of gold, were all affected by the hard conditions by which they found themselves surrounded—conditions that made help in

the shape of stout laborers a necessity. When the Huguenot arrived, boiling over with religious fervor, and the passengers from the Mayflower dropped on their knees to return thanks to God for having enabled them to reach the land where they might give full expression to their ideal life of piety and devotion, they little thought that in Old New England Negro babies would be so eagerly sought for as slaves that they would be sold by the pound. The political adventurer, too, saw many of his dreams of greatness fade as he found himself practically confined to territory within the range of his rifle notwithstanding the number of acres described as his in the king's Letters Patent. The vast expanse of unopen country and forests filled with hostile Indians and the utter lack of facilities for inter-colonial communication, tended to define and limit the bounds of the several settlements almost as completely as though they were Continents separated by wastes of water. Neither common blood nor identity of interests could accomplish the destruction of these barriers before localism had secured a long start on confederation, to say nothing of nationalization. Each settlement had its own regulations, and troubles, too, without the least reference to the other. So it happened that the Puritans of New England, the Cavaliers of Virginia and the Dutch of New York, had but slight connections with each other. All began to develop under a sort of look-out-for-yourself policy; all anxiously purchased tramps, expelled from England, and exiled felons for terms varying from four to seven years, under such arrangements as could be made with the skippers. They even bought victims kidnapped from European ports, for kidnappers had been getting white men long before Negroes had been thought of in this connection.[1]

It is one of the most curious paradoxes of history that human slavery of the meanest and most loathsome type should have developed at a time when there was nothing discussed so much as the Bible, nothing professed more blatantly than Christianity and theologians had a monopoly on the learning

1. Thwait's Epochs in Amer. Hist., page 74. Salmon's Domestic Service, page 22.

of the age. Europe had just begun to realize that her people were enslaved by a Church whose priests were enslaved by their own bigotry while the whole population was enmeshed in the embraces of a terrifying religious superstition that terrified all who embraced it. There was a seething in the religious world. Men began to make laws to restrain the rapacity of the Church and were hesitating about striking at the State which they found involved. These troubles were beginning to be acute, especially in England, where kings were destined to be dethroned on account of it and one at least was to lose his head. This strife impoverished many people who not only sought peace and safety in flight to America but here also hoped to recuperate their broken fortunes. The English rulers were glad enough to get rid of many of these agitators who were clamoring not only for religious liberty but for the equally if not more important rights of civil liberty, by granting them land in America. But after all, land is of but little use without labor and these broken English gentlemen had never worked with their own hands and the number of stragglers whom they, with the assistance of skippers, could kidnap about the docks of London, was quite inadequate. The mother country naturally encouraged these adventurers in every manner calculated to make them come here and to remain, and if these conditions caused the stealing of straggling Englishmen to be condoned, surely the members of an alien race could expect little sympathy and no help against the ravishers. Everybody could take all the men he could catch and hold them as long as he could.

The common dangers of the American colonists naturally caused them to make their cause common. The planters were compelled to combine not only to hold their slaves and indentured servants, the euphemism applied to their white slaves, but more especially to protect themselves against the ugly tomahawks of the Indians. And while these colonists soon organized and settled themselves in communities, they brought with them from abroad all their religious prejudices and racial antipathies. Here was a settlement of Huguenots,

there one of Dutch, and still another dominated by Quakers as about old Philadelphia, while Cavaliers held forth further south. These communities developed and finally divided the territory among themselves and took the name of states. They built schools and churches to suit themselves likewise exploited their slaves and burnt their witches. Although commonly practiced over all the country, slavery in its infancy was recognized as a strictly local institution, and its regulation, propagation or abolition was altogether under the control of the local community. Thus it happened that many states just after the Revolution abolished slavery within their borders.[2]

The reaction from the struggle for independence and the manly part the Negroes had taken in the war as soldiers and fellow-workers with the other patriots, naturally attracted attention to their social and political status. All the leading men of the nation were, at that time or soon before, anti-slavery men and slave holding was never so unpopular in this country. Jefferson's opposition to slavery was well-known.[3] He both wrote and spoke against it and no man of his time did so much as he did to check its progress. Madison and Henry also opposed the institution.[4] But this opposition did not go so far as to demand immediate and unconditional emancipation, for the system had already taken too strong a hold under the fostering influence of England to permit men like the above to anticipate Garrison.

The expatriation of the freed colored people was one of the cardinal principles of the early emancipationists; indeed the American Colonization Society was but the crystalization of this idea into a working organization. The great moral force

2. Massachusetts adopted a Constitution which the Supreme Court of the State declared incompatible with slavery, in 1780, March 2; Connecticut passed her Emancipation Act March 1, 1784; Rhode Island about the same year; New Hampshire in 1792; Vermont, 1793; New York, 1799; New Jersey, 1804. "The condition of Negroes in this Union is regulated by the municipal laws of the separate states; the Government of the United States can neither guarantee their liberty in a state where they would be recognized only as slaves nor control them where they would be recognized as free."—Extract from Instructions of John Quincy Adams, Secretary of State, to Gallatin and Rush, Plenipotentiaries to England, November 2, 1818. Annals Fifteenth Congress. Appendix, page 1577.

3. Giddings' Hist. Rebellion, p. 11.

4. Jefferson's Works, Vol. 1, pp. 23, 24, 135. Elliott's Debates, iii, p. 455, etc. Livermore's Essays—Attitude of the Founders, etc., ch. 1.

that constantly sustained the anti-slavery agitation, however, emanated from the religious sect known as Quakers or Friends. Year after year they discussed the institution and bitterly arraigned its supporters. The first anti-slavery society in the United States was founded in Philadelphia in 1775, with Dr. Benjamin Franklin as President.[5] Dr. Franklin was succeeded by Dr. Benjamin Rush. Other societies were formed as follows: New York, 1785, with John Jay as President; Delaware, 1788; Maryland, 1789; Rhode Island and Connecticut, 1790; Virginia, 1791; New Jersey, 1792. All of these societies were represented in a general convention held at Philadelphia in 1784, from which date general conventions of the kind were kept up, somewhat indifferently at times to be sure, until about the time of the founding of the American Anti-Slavery Society in 1833.[6] In May, 1776, the whole Quaker sect or Church adopted a resolution withdrawing fellowship from any of their number who refused to discountenance slavery after that date. As a consequence of this move, a large number of slaves in Virginia, North Carolina and other southern states was emancipated. Many of these, however, were re-enslaved by the southern planters before they could effect their escape from these parts. It is recorded that in three counties of North Carolina alone, one hundred and thirty-seven of such persons were sold into slavery again by the sheriff in a single day.[7]

When this state of affairs was brought to the attention of Congress, a bill was promptly reported "For the Protection of Free Negroes," etc., but it was never acted upon.[8] Indeed it was seriously claimed in North Carolina that no person had the right to emancipate his slaves and this contention was maintained until the Supreme Court of the State decided that such a right did exist[9] whereupon the legislature of the state passed a law authorizing any one to sell free Negroes into

5. Nearly one hundred years before this time the Quakers of Philadelphia had begun to agitate the slavery question. Vide Pennypacker's "Early Dutch Settlers."

6. Life of Garrison, by His Children, Vol. 1, p. 90.

7. Giddings' Hist., etc., p. 23.

8. Cf. Giddings, p. 22.

9. Vide Stroud's Slave Laws.

slavery. And it was on the petition of the slave holders of North Carolina that Congress, in 1802, passed an exclusion act against the Negroes of Hayti. At this early period there was little anti-slavery literature of a permanent nature published in this country, unless the memorials and petitions of the Quakers and the anti-slavery societies be called permanent.[10] These petitions and memorials which were constantly poured into Congress soon began to be reflected in essays at legislation either to tighten or loosen the chains of the slave. In every slave-holding community, and this included about the whole country, there were statutes and ordinances discriminating against Indians and Negroes. Except for the purpose of illustration, however, it is not our intention to notice particularly these local regulations, which in themselves would fill many volumes, but to direct attention to the national aspects of the race problem, so called, as it came up for consideration as THE QUESTION BEFORE CONGRESS.

10. Ralph Sanderson, a Quaker, published a pamphlet in 1729; Benjamin Lay, another Quaker, published one in 1737. Many works against slavery had been published abroad by eminent Negro scholars, but they dealt with the question in the West Indies and the books had little or no circulation in the United States. Eminent statesmen abroad had also published many works. cf. H. Gregoire.

The Question Before Congress

CHAPTER I

The Attitude of Leading Statesmen on the Question of Slavery—Slavery in the Constitution to Satisfy South Carolina and Georgia—Slave Trade Stimulated—Protest of Quakers to First Congress—Proposition to Declare Freedom of Slaves in the District of Columbia After July 4, 1805—Suspension of Commercial Relations with Hayti—Slave Trade Attacked by John Randolph of Virginia.

Slaves can be acquired only by the power of arms and can be held only by a continued exertion of the overwhelming force by which they were acquired. This means a state of perpetual warfare though the forces in resistance may be so feeble as to be practically negligible. But feeble as these opposing forces may be they are always sufficient to make timid ones fearful, brave ones apprehensive and to deprive all of the sense of absolute security. For although after generations of breeding and training in subjugation, most of the pristine manhood and stamina of a people may be cuffed and cudgeled out, there is always the danger of atavism and the likelihood of meeting with a Nat Turner or Denmark Vesey at some lonely spot on our pathway, and worst of all, suppose we should meet a Toussaint L'Ouverture! For it happened that just about the time the fathers of our Republic were laying the foundation of the government, this country, and the world at large, was filled with the echoing sound of the feet of Frenchmen fleeing from Hayti. Small wonder, then, that the statesmanship and philanthropy of this country at the time was against human slavery and that a strong effort was made by men like Jefferson to put an end to the slave trade and to arrange for the ultimate extirpation of the institution from among us[1] and that a majority of the states

1. Elliott's Debates, Vol. 4, p. 285.

as shown by their representatives sent to the convention was in favor of such propositions, and that the project failed only because a two-thirds vote was required to pass it.[2] The representatives of Georgia and South Carolina made the recognition of slavery a sine qua non of their states entering the Union.[3] Besides the political expediency of shelving an unpleasant question, there were many things before this convention that were deemed of greater importance than this matter of getting rid of the incubus of slavery. Then, too, it was thought that after we had settled down to the quiet enjoyment of our liberties under our Constitution, the nation would take up and settle the slavery question within a generation at furthest. And although this proved to be a delusion, it was readily indulged and the question was allowed to be compromised. As an expedient resorted to in the formation of the Union, it worked fairly well and accomplished its purpose; but compromises never settle anything permanently; it was forced on the nation by South Carolina and Georgia, which states made it their price of entering the Union.[4] Having won this first contest under the Constitution, and being stimulated by the continued demand for slaves, the African slave trader soon became bolder in his activities, more shameless in his methods and more callous of conscience. The method of kidnapping men by enticing them aboard ship under pretense of the desire to trade was soon given up as too slow, too sentimental; too much dependent upon chance. To make sure of large, quick loads, the trader could not remain aboard ship and wait for his prey while in African ports. Native villages were sought out and such inhabitants as might be fit for slaves were seized, while the rest were butchered or burned with their huts. These depredations soon became intolerable to all who were not participating in the immediate pecuniary benefits. An anti-slavery convention was called to meet at Philadelphia in 1794, when and where these outrages were taken up and discussed, and as a result, a memorial was sent to Congress demanding the abolition of the African

2. Amer. Conflict I, p. 39.
3. Madison's State Papers III, p. 145.
4. Giddings, p. 12.

slave trade. In response to this appeal and the public sentiment it created, Congress passed an Act[5] making it unlawful for any of our citizens to engage in the foreign trade. The promptness with which these petitions were responded to is worthy of note in view of the changes that subsequently took place in this regard. This act was amended by acts passed May 10th, 1800; February 28th, 1803; and March 2d, 1807.[6] The last-named statute was evidently enacted in anticipation of the expiration of the time limit on the foreign slave trade as originally fixed by the constitutional compromise which provided for the cessation of the trade after 1808.

The southern planters, however, had definitely determined to hold their slaves at any cost; and many doubtless thought that the union of the states would afford them additional security; that under the Union slaves might be exploited for their local advantage while under the mutual protection clause of the Constitution, the power of the nation might be called upon to suppress anything in the nature of a serious servile uprising. After forcing the first compromise into the Constitution, in connection with these interests, they immediately set about the work of further safeguarding them. We had just entered upon the age of our agricultural expansion and the planters and farmers had and exerted a political influence hardly less potent than that exerted by the great commercial and manufacturing corporations of a century later. The Congressional debates on questions in opposition to the slave-holding interests at this particular time were likely to be spiritless and tame and usually resulted in a victory for the planter-barons. Almost as soon as the national government was formed, the southern planters secured the passage of a Fugitive Slave Act (Feb. 5, 1793). Prior to the date of this Act the existence of slavery was entirely dependent upon local regulations and under local police power which had and could exercise no extra territorial jurisdiction. While the relations of the slave states were always reciprocal

5. March 22, 1794, Annals of Congress.
6. Act of 1800 forbade citizens of the United States holding or owning property in any vessel engaged in the trade; 1803 forbade the landing of any vessel carrying slaves at any port of the United States where state laws prohibited slavery.

in matters connected with the management and control of slaves, a different atmosphere was experienced as the borders of the non-slave holding states were approached where the people were first indifferent, then cool and finally hostile. This anti-slavery attitude, however, was sustained by sentiment alone; it was not then so clearly seen how unfavorably the competition of slaves was affecting the social and political interests of our free yeomanry. When the Act of 1807 was before Congress, therefore, there was little or no aggressive opposition to the provision in the sixth section to the effect that "though it be illegal to import Negroes as slaves, they, on arrival, may be enslaved by the legislatures of the states where they may be landed." If this did not leave the door open for the continued importation of slaves, it certainly had the effect of leaving the latch string hanging invitingly outside. Several of the states took immediate advantage of this clause and enacted laws to suit the case.[7] And when the Quakers of New York, Pennsylvania, New Jersey, Maryland and Virginia petitioned the First Congress for the abolition of the slave trade, the petitioners were politely informed that "Congress had no power to act in the matter until after 1808."[8] It will be remembered that it was not yet contended that Congress had no right to act at all which contention did not arise until many years later when it became the rock on which the ship of state stranded. But there was even at that time an undercurrent of doubt as to how far Congress might go in the direction of regulating slavery in the states. There was no question, however, about the right and duty of Congress to legislate concerning the national domain not yet erected into states.[9] In this connection a resolution was introduced in the House by Representative Sloan, of New Jersey, in the early part of 1805, declaring free all blacks, mulattoes, etc., born in the District of Columbia after July 4th of that year. This was lost by a vote of 77 to 31. Six Rep-

7. Stroud, p. 271.

8. Article 1, Section 9, Constitution United States.

9. Dred Scott decision declaring among other things unconstitutional the Act excluding slavery from a portion of Missouri, was the first effective attack upon the exclusive jurisdiction of Congress over the Territories.

resentatives from slave states voted for the measure—four from North Carolina, one from Maryland and one from Kentucky.

When one reflects upon the vote on the Ordinance of July 13th, 1787, which excluded slavery from the Northwest Territory, the vast section which was subsequently carved into six powerful states, and compares the figures with this vote in 1805, relative to the District of Columbia, it will be seen how solidly and steadily slavery had advanced during those two decades. Besides having brought upon the nation no less than a half dozen wars, counting those with the Indians and Mexico, slavery kept our foreign relations always unsettled. Perhaps one of the meanest little acts in this connection of which we became guilty was the suspension of our commercial relations with Hayti in 1806 in order to discourage the people of that island in their struggle to maintain the liberty they had wrenched from France; and this act was passed after a lengthy and somewhat acrimonious debate in the House by a vote of 92 to 26.[10] The slavery question was passive from 1807 to 1816, complications in connection with our foreign relations which ultimately led up to the second war with England having absorbed both popular and legislative attention. On March 1st, 1816, John Randolph, of Virginia, made a short but bitter speech against the slave trade and moved to instruct the Committee on the District of Columbia to report a bill abolishing the trade in the District. The motion was carried and a bill was reported, but no further steps were ever taken.[11] But the cauldron had again begun to boil and bubble, and so when the Fifteenth Congress met there was an unusually large number of petitions for the abolition of the slave trade. All of these petitions were read but no further action was taken. One of the first things this Congress did, however, was to pass an act amending the Fugitive

10. This law was repealed in 1860. England refused to acknowledge the independence of Hayti, spurned her offers of commercial advantage, denied her West Indian colonies any intercourse with the island and even as late as 1825 passed an act forbidding any foreign ship that had touched at San Domingo to enter any port of Jamaica. Vide Frazier's magazine, February 22, 1879, p. 453; article by Francis W. Newman.

11. Giddings, p. 42.

Slave Law, and when an effort was made to insert a clause intended for the protection of free Negroes by securing them from arrest except under such circumstances as rendered other citizens liable to arrest, it was defeated. And so we come to the year 1819, when there was soon to occur that great test of strength on the part of both the slavery and anti-slavery forces in Congress over the admission of Missouri.

In excluding slavery from the territories ceded by Virginia and the Carolinas under the Ordinance of 1787, the Ohio River was taken as the natural dividing line between slavery and freedom, the part north of that river was known as the "Northwest Territory" and in this slavery was abolished by the Ordinance; on the south side of the river, known as the "Southwest Territory," including what afterwards formed some of the southern states, like Mississippi, slavery was retained under the Ordinance, but even here it was provided that no more slaves should be brought in from foreign ports, that is, from places outside the United States. Some of the inhabitants of the Northwest Territory complained bitterly on the account of the emancipation of their slaves without compensation and petitioned Congress for relief, but it was determined to be inexpedient to grant relief. John Randolph, of Virginia, in reporting for his committee against relief, pointed out the fact that the products of these lands did not require slave labor, besides the country was being settled by people from parts where slavery did not exist, and that it was the policy of the government to discourage slavery in every way. But sentiment changed rapidly after it was seen that no serious attempt was to be made to check the foreign slave trade after 1808, as provided by the Constitution. The fight over the conditions under which territories might be admitted to the Union began here and may be traced down through the days of Reconstruction. Time and again the question would be brought up in one way or another and in every instance the opinion prevailed that Congress was supreme in its power to govern and regulate. The slave power took the ground that the territories being common property, slave-holders

might enter them with their slaves without regard to any regulation that Congress might make. And while this was generally true, the fallacy of their argument, as so ably pointed out by Mr. Benton,[12] was in the fact that slaves were not generally regarded as property and were made so only by statute; and because a man was held in slavery in Virginia, where the law made him a slave, it did not necessarily follow that he would be a slave also in Massachusetts, as the Virginia slave-holder could not take his laws with him to Massachusetts. The fight was renewed over every new territory acquired by us and upon the admission of every territory as a state. And while our leading statesmen and constitutional lawyers recognized the question as one belonging exclusively to the realm of politics and therefore within the determination of Congress, listening to the repeated appeals of the slave power, the Supreme Court went beyond its jurisdiction and even beyond the question that was properly before it in the Dred Scott case, and undertook to nullify the Missouri Compromise. This caused the troubles in Kansas and ignited the fires of the Civil War.

12. Examination of Dred Scott case by Thomas H. Benton.

CHAPTER II

The Organization of the Territory of Arkansas and the Attempt to Exclude Slavery—The Missouri Struggle—Secession Threatened—General Talmage's Defiance.

The movement for the admission of Missouri as a state into the Union in 1819 aroused the most serious and significant discussion of the slavery question that had occurred after 1787 up to that time. Several times between those dates, however, there occurred incidents that evidenced the determination on the part of the South not only to hold on to slavery but to extend its influence, as was shown, for instance, in its attitude towards the Indians in that section. The year 1808 had come and passed, yet no one in Congress had called attention to the proposed discontinuance of the African slave trade according to the terms of the constitutional compromise. The Indians had been pushed further back upon their reservations to make more room for slave territory, yet no one had complained (but the Indians); the national authorities even endorsed this treatment of the aborigines. This complaisant attitude on the part of the government naturally encouraged the supporters of slavery and made them bolder in their fight. Indeed, the government, having either plainly condoned the breach of the constitutional compromise by the South or given active aid to the pro-slavery plans of that section, was now in no position to attack nor even to defend against any assault the pro-slavery party might make. But however it might have been with the politicians, there was still much anti-slavery feeling among the people. It was about this time that the South began to make the slavery question a political issue. The Democrats of the South began to act together on this question and insisted that their northern brethren should either act with them or be forced out of the party. And as the South was in control of the party machinery, that section was able to dictate the party

policy and to withhold recognition from any who might be regarded as unsound on this vital issue. This alignment of the South and the withholding of party preferment from all persons even suspected of anti-slavery inclinations, soon developed opposition in the North and East, principally on the part of individual statesmen. The great planters of the South were all pro-slavery and at this time their influence in politics was overwhelming. The influence of these planters, exercised through the Democratic party, was very similar to that of the great manufacturing and corporate interests of to-day in connection with the Republican party.

Just before the Missouri question came up it was proposed to set apart Arkansas as a territory. Mr. Taylor, a Representative from New York, moved an amendment to the Arkansas bill to the effect that all persons born in the territory should be free at the age of twenty-five, and this amendment was adopted by a vote of 75 to 70. On this occasion ten Representatives from free states voted for slavery, while two from slave states voted against it, one of these being from North Carolina and one from Maryland.[1] The slave power having by this time waxed so strong, largely perhaps because it was practically let alone from 1807 to 1816, the vote on this question caused much surprise. The slave-holders had come to feel that they should have as many states as were controlled by the non-slave holding states in order that the legislative equilibrium might be maintained between the sections. This amendment afforded the first opportunity to test the attitude of the rest of the country on this phase of the southerners' contention and tended to show that no such right would be conceded. But while the opponents of slavery could muster up sufficient strength to have the amendment adopted, they had no complete organization nor control over the machinery in either house of Congress. It was comparatively easy, therefore, for the pro-slavery men to have the whole matter referred to a special committee which soon reported it back with the amendment stricken out. On the question of adopting this committee report, the vote stood 88

1. Cf. Giddings, p. 52.

to 88, whereupon Henry Clay, then Speaker of the House, voted in the affirmative and the report was adopted without the amendment. An effort was made to revive the amendment in the Senate but utterly failed, the forces willing to stand for freedom in that body having already dwindled to insignificance. Mr. Clay, in after life, is said to have regretted his vote on this occasion; but he was a politician and did not have the courage to offend the great planter barons. The vote on the Arkansas bill having shown that although the slave states were in the minority, they could expect no more territory at the hands of the nation without a struggle, a more aggressive policy was determined upon. The contest for the extension of slavery from now on was forced. It was clearly seen that the right to count two-thirds of the slaves for the purposes of representation would not long save the South from being swamped by other sections unless the institution of slavery should be extended into other territory. How to extend slavery, then, became the great problem for the South. It was useless to look toward the North, where the benefits of universal freedom had been so well demonstrated by the prosperity of the great commercial and manufacturing interests in which the whole population was participating, and where there was neither an oligarchy nor a submerged class. The people of the North had set their faces against slavery, and to emphasize their position, the legislatures of Pennsylvania, New York, New Jersey, Ohio and even Delaware, had passed resolutions suggesting to Congress the advisability of restricting slavery in Missouri and enjoining their Representatives to vote and work to that end. The Pennsylvania Assembly was particularly severe in its arraignment of slavery.[2] When the Missouri bill came up, therefore, all hands in Congress were ready for the struggle. The sharp debates on the Arkansas measure in connection with the actions just referred to on the part of state legislatures only caused a sharper line-up on the Missouri question. And as soon as the Missouri bill was reported, Gen. James Talmage, representing New York, was ready with an amend-

2. Pamphlet Laws of Pennsylvania, 1819, p. 198, etc.

ment of the following tenor: "That the further introduction of slavery or involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall be prohibited, and that all children born within said state after the admission thereof into the Union shall be declared free at the age of twenty-five years."[3] After a three days' debate, this amendment was adopted by the House by a vote of 82 to 78. It was sent to the Senate, but that body struck out the amendment by a vote of 30 to 6.[4] When the House refused to concur in this change, Mr. Taylor, also from New York, moved the appointment of a special committee to report measures for the prohibition of slavery in the territories west of the Mississippi, but in making up this committee Mr. Clay appointed a majority of pro-slavery men, and after deliberating for some time, Mr. Taylor was compelled to report their inability to agree on any plan and the committee was accordingly discharged. Being unable to reach the Missouri question through the means of this committee, it remained in statu quo. Soon after this time Maine applied for admission into the Union, and the well known fact that this was to be a free state added fuel to the flame already raging over the admission of Missouri. Threats of secession rang through the halls of Congress for the first time and were caught up and hurled back with eloquent emphasis. Webster's reply to Hayne a few years later, was a defense, but Talmage's reply to Scott, of Missouri, who had just delivered himself of a tirade threatening the life of the Union in 1819, was a defiance. In closing his speech, General Talmage said: "If dissolution of the Union must take place, let it be so! If civil war, which the gentlemen so much threaten must come, let it come! My hold on life is probably as frail as that of any man who hears me, but while it lasts it shall be devoted to the service of my country and the freedom of mankind."[5]

The Maine bill was attached to the original Missouri bill

3. Annals Second Session Fifteenth Congress.
4. At this time there were twenty Senators from Free States.
5. Annals, Feb. 16, 1819, p. 1203-6.

and passed by the Senate by a vote of 24 to 20. The anti-slavery amendment was again inserted when it reached the House by a vote of 94 to 86 and returned to the Senate, which body again struck out the amendment by a vote of 27 to 15. And thus the battle waged through the entire session without signs of weakening on either side. In the meantime, Mr. Clay, who was leading the pro-slavery forces in the House, moved the appointment of a special committee for the consideration of the matter. This committee was elected by the House, so important was the work cut out for it to do, and the thirteen members receiving the highest number of votes were to form it. Mr. Clay was elected first and was made chairman. To this committee were submitted many plans for settling the difficulty, and among these was one formulated by Senator Thomas, a rabidly pro-slavery man from Illinois, in the following language: "That in all that territory ceded by France and known as the Louisiana Territory, which lies north of 36 degrees and 30 minutes north latitude, except only such part thereof as is included within the limits of the state contemplated by this act, slavery and involuntary servitude otherwise than as punishment for crime, etc., shall be and is hereby prohibited." Following this was a short fugitive slave clause. The special committee thought well of this plan and it was accordingly reported through Mr. Clay, who became its champion. John Randolph, of Virginia, was a strong opponent of the bill, but Mr. Clay hastened it through the House and at once rushed it over to the Senate to defeat Mr. Randolph, who was preparing to move for a reconsideration of the vote by which it had been adopted.[6] When Randolph did get a chance to speak he made a most bitter attack not only upon this measure, but upon the whole North for its attitude on the slavery question. It was on this occasion that he applied the term "dough faces"[7] to those northern members who voted for the measure.

The Senate passed the Missouri bill February 17, 1820, and

6. Cf. Gidding's, p. 65.

7. This afterwards became a common term of derision that was applied to Northerners generally; if Randolph did not invent it, he certainly popularized it.

at the same time adopted a resolution enjoining the state at the first meeting of its legislature to pass a law forbidding free Negroes within its borders. This resolution, however, was defeated in the House.

The covenants of this famous compromise were as follows: First, that the people of Maine should be allowed to form a state government; second, that the people of Missouri should be allowed to form a state government restricting slavery to an extent; third, that slavery be excluded from the remainder of the Louisiana Purchase.

This struggle over the admission of Missouri marks the beginning of the end of slavery in the United States, although the advocates of the system seemed to have triumphed so gloriously on this occasion. Indeed it was the very progress of slavery during this period that brought it to such an early end. It was its aggressive spirit that kept the eyes of the world forever upon it, inviting attack from every side. The South, however, soon gave up further attempt to secure any of the other territories of the Union at that time and turned its attention to the acquisition of territory elsewhere which was followed by more disastrous results than ever, for in endeavoring to carry out these designs the whole nation was involved in war with Mexico. The slave-holders felt that they needed Texas and virtually undertook to seize it from Mexico after a handful of Americans squatted on the land for a while and organized what they were pleased to call a revolt against the Mexican government. The cry was sent out that our citizens were being robbed and dispoiled by Mexicans, and while everybody knew that this was a mere fake, the slave-holders, whose agents and tools filled all the government offices and the army, had little trouble about getting the nation to take up their fight. War was declared and Texas was raped from Mexico. The territory pretended to start out as an independent state, it is true, but that was all in the game. Everybody, from Sam Houston down or better, up, knew how and for what purpose we got into trouble with our southern neighbors. The same ingenious statesmanship contemplated the acquisition of Cuba and perhaps the whole of the more im-

portant islands in the West Indies, but finding the powerful North and West so little inclined to help in the war on Mexico, they had to make themselves satisfied with treaties and Ostend Manifestoes until such a time as it was hoped the country would be sufficiently aroused by their propaganda to justify the attempt to go up against England and Spain, for while they had the politicians they knew the people were against them.

A campaign of education was immediately inaugurated. The Missouri Compromise just adopted after a struggle memorable for its bitterness on the floor of Congress was now appealed to the people by its enemies. It became the text for platform orators and pamphleteers and the subject to which editors daily referred. Demagogues reviled it; politicians execrated it; preachers anathematized it, while the common people of the South, mimicing their masters, sneered at it. It was really a big question and big with the progeny of evil, of dark days for the Union, of war, of death and destruction. It was the parting of the ways where a temporary expedient would no longer suffice for the adoption of a definite course. We had to take a direction leading to a more perfect union as a nation of slave-holders or one leading in the direction of a nation tending towards the freedom and equality of all its inhabitants, for all that the wisest statesmanship and the most inexorable force can produce is a tendency rather than a finality in the movement of a nation. At all events, then, we were about to take another step in the direction of forming the more perfect union of which we speak in the Preamble of our Constitution. Questions affecting our national defence had been raised and settled; likewise questions affecting our credit. Indeed, all the various departments of our government had been organized and set into operation with commendable smoothness. Perhaps no people, situated as we were, composed of different states whose inhabitants were complex, many of the original ones having been exiles from different parts of the globe with a difference in training, some impelled by greed for gain, others by religious sentiment and all under the spell of a feeling of independence and

freedom from political restraint at least, could have accomplished more or done better in a given time in the construction of a nation than did the fathers of our Republic. Common interests and common dangers tended to cement us during the Revolution. After this struggle it was but natural that communities that had developed into states under their own laws and customs which had hitherto gone unquestioned, should hesitate about giving up their autonomy. It was not strange, indeed, that South Carolina and Georgia should have had the courage to name their price for yielding up many of their cherished institutions to be paid before coming into the Union. All the states gave up much, it is true; it is also true that much was reserved in the grant. And if the courts are still being appealed to daily to determine what the various states gave up and what they retained under their own jurisdiction, what, though lawful in a state, may be a national offense, whether one in Massachusetts may deport himself like a Georgian, how much more unsettled must these questions have been in 1820? As a rule states do not give up their autonomy without a struggle. The German Empire, like most other such modern combinations, was welded together by a force that won for Bismarck the name of the "Iron Chancellor." The states forming our Union generally quietly acquiesced, only some in the southern section demanded that they be allowed to hold their slaves—black slaves and people of an alien race. Thus it was agreed and thus the Union was formed, but to what extent they might hold their slaves outside of their own territory was quite another question, although there is a tacit agreement implied in the Ordinance of 1787 that slavery should not be extended. The right of extension, however, was at once asserted by the South, while the North hedged. In 1857, Taney, more than a generation later, undertook to settle the debate by his Dred Scott Decision, but he only excited the contestants to blows —blows which, if they had been applied to Pinckney and his few followers in the Constitutional Convention, might have settled the controversy in four days without bloodshed, which now lasted for four years and drenched the country in blood before the trouble ended at Appomattox.

CHAPTER III

President Monroe and His Cabinet on the Principles of the Missouri Compromise—Slaves as Personal Property—Indians Succor Escaping Slaves—The Exiles of Florida—Battle of "Blout's Fort"—The First Seminole War—The Ejectment of Indians From Georgia—Second Seminole War—Attack Upon Major Dade.

The Missouri Compromise being the question of the hour, made so, as we have observed, by the very people who should have been most interested in having it forgotten, President Monroe, soon after taking his seat, propounded to his Cabinet the following questions: First: "Has Congress power to prohibit slavery in the territories; second: Is the Missouri Compromise constitutional." So far as is known, the President was unbiased and sought the honest unbiased opinion of his advisers. He did not push for an answer and each member had time to study the questions and give a written reply and all answered both questions in the affirmative.[1] John C. Calhoun was perhaps the most distinguished member of this Cabinet, but it appears that he did not hesitate to reply in unison with his colleagues. It is true that at that particular moment the great party leaders, especially in the North and West, were making a heroic effort to make the people believe that the slavery question had been settled and Clay was being lauded for the part he had taken in it, Mr. Calhoun and the rest doubtless felt that it was safer for their personal popularity to appear to be in accord with this ebulition of sentiment, although it proved to be only momentary, rather than to be placed in a position where he might be charged with reflecting on a public idol through jealousy, for Mr. Clay was immensely popular at that time. Regardless of Cabinets and of Calhouns, however; regardless of the shouts of the northern populace and the thunders of the press, the pro-slavery magnates sat in judgment on this instrument and

1. Giddings, p. 65.

condemned it. Mighty Caesar spoke and the thunders of the northern dailies became a whimper and the great statesmen of the North began to apologize and excuse. A move was immediately made to have Congress declare slaves to be "property." If Congress should say they were "property" then consistent objection could not be made to such property being carried by the owner to any part of Missouri or elsewhere as might be found desirable. The question was raised in connection with the claims of one D'Autreve for the loss of slaves in the battle of New Orleans in 1814. The debate in the House was long and exhaustive, extending over three weeks. The thoroughness of this debate and the care exercised to avoid giving an affirmative answer was doubtless due in part at least to the fact that an affirmative answer would have meant the immediate filing of numerous other claims for the loss of slaves and alleged slaves through the exigencies of the war of 1812 in which many black men participated, both with Jackson at New Orleans and with Perry on the Lakes. The House, however, by an overwhelming vote resolved that slaves "were not such property as could be paid for by the United States Government under the circumstances." Thus the question was left open, although on this particular occasion only 32 voted in the affirmative. Obviously an answer so uncertain, indefinite and vague could not be satisfactory. After repeated failures in Congress where the question had to be debated in the open by men who were responsible to their constituents, the slave-holders resorted to the United States Supreme Court for the relief which Congress denied them. This august body, after hearing or pretending to hear the case brought before them involving the question, solemnly declared slaves to be "personal property." Much less could hardly have been expected from this Court, immune from public attack and composed, as it was, of men appointed either directly or indirectly by the slave influence. Judges are none the less men and as such are susceptible to all the ordinary human influences. It was not strange, therefore, that men born and reared either slave-holders or among slave-holders, should see things from a slave-holder's point of view.

Besides, if slaves were not property, what were they? They could be bought, sold, mortgaged or even given away. And yet if they were property, why did the Constitution recognize them as men to the extent of having them counted and used as a basis for representation? Why were men sitting in Congress as the avowed representatives of a slave population instead of the representatives of so many cattle or hogs? But this question was not before the Court; if it had been, doubtless some answer would have been found which if not satisfactory to all would have been satisfactory at least to the political party to which a majority of the judges owed their appointment. For after all, law is but a set of rules and regulations prescribed by the majority which the rest of us must obey under penalty which the stronger may always inflict upon the weaker with impunity. When a statute is passed, it indicates what a majority of the people want and the judge who undertakes to construe it contrary to this majority sentiment will not only become unpopular but is likely to have his usefulness impaired; and there is no question about the fact that public sentiment at this time was pro-slavery. But even this decree of the Supreme Court could not keep this question from constantly recurring. During the Revolutionary War and the exciting times immediately following, the supervision over the southern slaves seems to have been particularly loose. This situation was perhaps due in part to the absence of the men engaged in the war, and partly to the ever present memories of San Domingo, and it was doubtless felt safer to exercise less restraint. At all events a great many slaves were allowed to escape from Georgia and the Carolinas, the most of them having taken refuge among the Creek Indians, then occupying a reservation adjoining Georgia; others went even further and found shelter among the Seminoles in Florida which was then Spanish territory. The aggrieved slave-holders not only did not ask outside aid to apprehend the fugitives but did not even take steps in the direction of trying to secure these escapes for nearly a generation and then they only asked and secured from Congress the right to go among the Indians to make the search.

Congress entered into a treaty with the Creeks under which their territory could be visited by persons claiming these alleged fugitives, but no one even thought of asking the government to go further. It would be quite incorrect to think of these hunted persons as fugitive slaves for the reason that most of the original ones had died and the remainder, together with their children, had become so intermingled with the Indians as to make identification impossible. Those who joined the Seminoles especially became completely absorbed by intermarriage with the natives. Almost the whole tribe became affected and changed to Indian-Negroes. Pursuant to the terms of the treaty just referred to, and in strict recognition of the fact that slavery was a local affair, a party of young men from Georgia repaired to this Indian reservation on what they facetiously called "a nigger hunt." As a hunting party they were most successful in finding their game, but unfortunately they found trouble with it, for the Negroes showed fight and did fight, and as a consequence of this fact, few, very few of those who went on the "hunt" returned home again to tell of the sport.[2] The fate of this expedition made a profound impression upon the minds of slave-holders. Toussaint L'Ouverture had just driven the French out of the West Indies and had done it without an ally and practically without arms other than those he captured. And the French were known to be of the most valorous blood of Europe and well trained in military tactics and the use of arms; and now these escaped slaves or their descendants were showing a fighting spirit that boded ill for the continuance of slavery without a strong arm to cope with it. Under the circumstances the self-sufficiency of states or state rights had to be thrown to the winds and the power of the whole nation resorted to for protection; and all the machinery of the national government at the time being in the hands of the slave power, there was not the least difficulty in securing national support. But as it was found to be no picnic or holiday trip for young Georgians to invade the Indian reservations in quest of alleged slaves, Gen. Andrew Jackson was

2. Giddings' Exiles of Florida.

sent in 1816, with a strong detachment of Federal troops to try conclusions with these alleged fugitives. He found many of them in the northern part of Florida, some three hundred of them entrenched in "Blout's Fort." The gathering of these men in anything like a fort was a tactical error that proved most costly to the defenders. From the trackless forest, entangled swamps and everglades a guerilla warfare might have been effectively waged and sustained to the great discomfiture of slave-holders and their agents. For these Negroes had again become real children of the forest and knew every hedge and hog path, every bog and fen, every hollow tree and hiding place in that district of wild things and wilder men. The search after these alleged fugitives with gun and dog could not have been more aptly described than as a "hunt." The situation was viewed in a far different and more serious light, however, after the unmerciful disaster by which this last "hunting party" was overwhelmed. It became a question that loomed large in the eyes of the planters in the affected districts; neighborhood hunting parties and even local militia could not be trusted to cope with it. Nothing short of a detachment of United States troops would be sufficient. Accordingly, General Jackson was sent to crush these exiles with a part of the United States Army. General Jackson promptly blew up the fort and practically wiped out its defenders.[3] To be more exact, of the 333 persons found there, 270 were killed, 60 wounded and 3 escaped. In this great military achievement General Jackson had the assistance of General Gaines and Colonel Clinch, all of the United States Army. And so grateful was the nation for this splendid work and conspicuous exhibition of gallantry, Congress, twenty-two years later, voted General Jackson and his associates the sum of $5000.[4] Other Negroes who were in the vicinity of Blout's Fort receded further into Florida swamps where they were cordially received by the Indians. But this friendly reception on the part of the Indians was dearly paid for, as it was made the pretext for the first Seminole War.

3. Giddings' Hist., p. 101.
4. Exiles of Florida, p. 42.

Southern planters never had any good blood for the Indians, any way, for they would not permit themselves to be enslaved, and not only this, they are said to have entertained no very serious scruples about making raids upon the stock of their white neighbors. And when we add to all of this the influence naturally exercised upon the minds of black slaves, it is not surprising that the Indians should have been regarded as a personal menace to the interests of the planters. A fugitive slave who might be able to reach the Indian Reservation was generally pretty safe, for both these Indians and their Maroon allies, could shoot and shoot straight from behind trees and shrubbery. Had it not been for these conditions a much longer period would doubtless have elapsed before the Cherokees would have been called upon to weep farewell to their Georgia, where their ancestors had for ages roamed and ranged along the shimmering waters of the Savannah. Perhaps they never would have been frocibly ejected had not the interest of slavery demanded it. And these are the same conditions that induced us to secure Florida from Spain in 1821.

Long periods of peace and prosperity always result in oppression of some sort and are followed naturally by a period of seething discontent. If peace and prosperity should continue unbroken for a decade the people will find themselves beginning to break up into classes; if the conditions prevail longer society will begin to develop into castes. The humane feeling and gratitude inspired by the successful termination of the Revolution by which our independence was won had become stagnant by 1820 and quite dead by 1828. As these feelings disappeared, the feeling of aristocracy and caste arose and waxed strong, especially in connection with our southern planters. Cotton became king and the planters, princes of the realm. There was little hope of political preferment except for those who kow-towed to these grandees. Little or no attention was paid to any in public places but the southern gentleman who contemptuously referred to the people of other sections as "dough faces" or "mud sills." It was only natural, then, that the South should furnish the man to succeed John Quincy Adams as President; natural it

was also, that this man should be of the type of Andrew Jackson, though Jackson was the first man of his particular class ever to fill that high office, being a typical poor white man—coarse and uncultured. But he had shown his mettle at New Orleans and earned some fame and the gratitude of the nation; he had also blown up "Blout's Fort," by which he earned more fame and the gratitude of the slave-holders. No better man could possibly have been selected for carrying out the program and designs of the southern planters in 1828. The Indians had to be immediately removed from their reservations in Georgia and Florida; anti-slavery literature had to be excluded from the mails and the demands of slavery yielded to without question or debate in Congress. There was need of a rough and ready man in the White House, and who could serve better than "Old Hickory?" What if the Indians should revolt at being ejected and involve us in a second Seminole War in 1835, the hero of Blout's Fort would be equal to the occasion. This second war was really commenced, however, by an attack by the Maroons, as these Indian-Negroes were called, upon Major Dade while he was moving a detachment of United States troops from Fort Brooke to Fort King, Fla., a distance of some one hundred and thirty miles. The route undertaken lay through a wilderness with which Major Dade was unfamiliar and the Maroons lay in wait, fell upon the unsuspecting brigade, slew the leader and his entire force. Thus sadly was the slaughter at "Blout's Fort" avenged, and thus slavery crossed another tributary of blood which flowed on to its ocean in 1861.

CHAPTER IV

The Twenty-fourth Congress—Anti-Slavery Literature Excluded from the Mails—The Right of Petition Attacked—Defended by John Quincy Adams—The Constitution of Arkansas Prohibiting Emancipation—The Jackson Administration—Anti-Slavery Men Leave South—The Agitation in the North Intensified—Effect of the Murder of Lovejoy—The Accession of Van Buren—The Twenty-fifth Congress—Secession of Representatives from Virginia, South Carolina and Georgia—Calhoun Binds Congress to Support Slavery—Giddings Enters Congress—The Twenty-sixth Congress Has Four Anti-Slavery Men—The Election of Harrison as President—The Abrogation of the "Gag Rule."

Great impetus was given to the agitation of the slavery question in this country in the early part of the decade between 1830 and 1840, by the situation connected with such affairs in the English colonies. Lord Mansfield had long since decided the Somerset Case which held that slavery was incompatible with life in England. After a lengthy and trying agitation by such men as Wilberforce, Clarkson, Sharpe and George Thompson, all slaves in the English colonies were freed by an Act of Parliament in about 1833. The result of this was to cause the agitation in the United States to assume a tone at once more hopeful and aggressive under the leadership of such men as William Lloyd Garrison. But the discussion here was, nevertheless, still in the stage that might be termed purely ethical and academic. No one had yet dared to call for a vote or to appeal to the ballot. The publication of fugitive and occasional disquisitions on the subject, now began to give place to a stream of literature that was more constant, more polemic in nature and more severe in criticism of the slavery system and its supporters. Benjamin Lundy had begun to publish his "Genius of Universal Emancipation" at St. Clairsville, Ohio, in 1821, and, during the same year, moved to Steubenville, Tenn., where he continued his publication until 1828, when he moved to Baltimore, where he was joined by Garrison. But even before Lundy started his paper,

Elihu Embree, another Quaker, had begun the publication of his "Emancipator," at Jonesburough, Tenn., which is said to have been the first paper or periodical ever regularly published in this country with the sole aim and object of opposing slavery.[1] Garrison began his work as a publisher of anti-slavery literature in 1828 while editing the "Journal of the Times," a paper established for the purpose of advocating the election of John Quincy Adams to the Presidency. "Walker's Appeal" made its appearance in 1829. Walker was a Negro, a barber by trade, who had gone to Boston from the South, where by industrious application, he had picked up a fair knowledge of reading and writing. His little pamphlet, of some 70 pages, was an essay on the cruelties of slavery and it created a sensation, not so much because of any particular literary merit, but because it was a forceful arraignment of slave-holders and was regarded as a remarkable thing for a Negro to accomplish.[2] In the hope of shutting off this flow of anti-slavery literature, upon the assembling of the Twenty-fourth Congress, President Jackson recommended the enactment of a law excluding such matter from the mails, on the grounds of its being "incendiary." To call these sharp thrusts from the pen of Garrison, the masterful polemics of men like Parker[3] and the scholarly effusions emanating from men like Channing, all aiming and intending to pillory slave-holders and to hold them up to the execration of mankind, "incendiary" could hardly be regarded as any great misapplication of the term or a wanton abuse of language. The press had already popularized the terms "dough faces" and "mud sills" as applied to the people of the North and West, and the same medium was now rapidly popularizing the term "dirty slave-holders" in connection with the designation of the southern gentry. It is not hard to see or to understand how these were mutually insulting to the people of these respective sections. Congress, therefore, did not hesitate to adopt President Jackson's recommendation for the passage

1. Garrison, Vol. 1, p. 88.

2. Williams' Hist., p. 553.

3. Rev. Dr. Theodore Parker and Rev. Dr. William E. Channing, both noted pulpit orators, of Boston.

of a law against the circulation of anti-slavery literature.[4] The efforts of Postmaster General Kendall to enforce this statute caused such a debauchery and demoralization of the Federal mail service as the country never witnessed before nor since. Mail matter addressed to persons suspected of being anti-slavery was held up and rifled, post offices were ransacked and all sorts of riotous excesses indulged in by hoodlums and zealots under the color of this law, in the pretended search for anti-slavery literature. Suspicion ran riot sharply reminding one of the situation in England in the days of the alleged Popish and Rye House Plots. To say that great indignation was felt by those disposed to resent this interference on the part of the government with their personal choice as to what they should be allowed to read, was to put it mildly. There was a howl of protest that gave the South a great deal of unfavorable advertising and it was soon made apparent that the statute was so impractical that attempts to enforce it would be futile and they were accordingly given up. By the time Mrs. Stowe began to publish her "Uncle Tom's Cabin," all efforts to exclude such matter from the mails had ceased. The fact that such a law could be passed, however, without even the most feeble opposition in Congress tends to show not only the great overwhelming influence of slavery throughout the country at the time, but how recklessly that influence was exerted.

Under Jackson, the slave power reached its zenith. The President led it; Congress fed it; the northern press flattered it, and the nation bowed to it. But this arrogance on the part of the slave power drew out and intensified the opposition. Petitions began to be poured into Congress daily demanding the abolition of the slave trade in the District of Columbia. Congressmen were accustomed to receiving such petitions from Quakers, but these memorials were not from Quakers. It was seen that Congress would soon again be embroiled in another serious controversy over the slavery question, notwithstanding the Missouri Compromise, unless steps should

4. Cf. Morse's Van Buren, p. 36; Benton's Thirty Years' Review, Vol. I, p. 575.

be immediately taken to prevent it. Mr. Pinckney, of South Carolina, therefore, at the beginning of this session, introduced a series of three resolutions to the following effect: First, That Congress has no power to interfere with slavery in the states; second, That it would be wrong to interfere with slavery in the District of Columbia; third, That petitions, etc., relating to slavery be laid on the table without debate.[5] These resolutions were adopted practically without opposition and for ten years were more or less strictly enforced. At this time there was in the House perhaps the most remarkable character in all its history, in the person of John Quincy Adams, who had enjoyed every honor within the gift of the nation and who was now representing Massachusetts. Mr. Adams opposed this blow at the constitutional right of petition with great energy, and continued to oppose it during the long time the rule was in force and he lived to see the obnoxious rule abrogated on his motion. One of the things that tended to increase the number of memorials to Congress at this time was the application of Arkansas for admission to the Union. The so-called border states or those touching and bounding on the slave states were always a source of annoyance to slave holders. The sight of such territory always made the eyes of the slave glisten for freedom and tempted him to run away. Then, too, there were individuals in the slave states, and especially in these border states, who were as bitterly opposed to slavery as the rankest Abolitionist, men and women as deeply touched with the spirit of humanity, as deeply grieved over the groans and tears of the slaves. Some of these would break away and leave like the Grimke sisters and Birney. Statistics show that at the time of the war there were perhaps ten times as many people living in the North who were born in the South as there were of those who had gone from the North to make their homes in the South. Yet there still remained in the South many persons of superior culture and enlightened Christianity who chafed under the tyrannical rule of the majority. Then, too,

5. Register First Session Twenty-fourth Congress, Feb. 8, 1836. Right of petition expressly denied to slaves by vote of House, Feb. 11, 1837. Globe, Second Session, Twenty-fourth Congress, p. 184.

there were persons in the border states, in fact in all the states who were as rabidly pro-slavery as any to be found about the burning marls of Georgia, persons who could leer as complacently on slaves shivering on the damp dirt floor of the slave pen as the most fiendish slave trader to be found in the swirling maelstrom of the infamous traffic in Mississippi or Louisiana. One of the most serious problems the slave-holder had to confront was as to how to keep the slaves furthest removed from the sight of free black men, to keep them under the impression that all black people were slaves, hopeless and abandoned. The individual slave-holder, therefore, who had the hardihood to liberate his slaves, immediately lost caste and was regarded as but little better than a criminal, and generally had to leave the community in order to escape the scorn and contumely of his neighbors. Indeed, there was no place in society for a man without slaves in slave communities, and the result was that all but the poor whites held slaves and the poor whites suffered under a heavier load of contempt than even the slaves. No respectable white man could work with his hands, and as a consequence, the poor whites trying to be respectable, did not work at all. Thus by degrading labor, slavery made it quite impossible for any except the wealthier classes to live comfortably in the South. The institution completely robbed the community of a middle class, the backbone of society. Indeed, none had a more just cause for thanking the Lord and Abraham Lincoln for liberating the slaves than the poor white people of the South. Landless, moneyless and with no occupation except that of overseer, they were dubbed "trash" by the colored folks while the pampered master class smiled derisively at the appellation. The best of them were the meanest sort of rascals. But as great as was the menace of this poor white mass to the rich man's sheep pen, corn crib and hen roost, the danger of having free Negroes at large in the community was regarded as being far greater. The Territory of Arkansas, therefore, before applying for admission to the Union, adopted a constitution expressly prohibiting its citizens from emancipating their slaves. This provision naturally

aroused a storm of protest and an insistent demand for its elimination before admitting the state. The protests were vain, however, except for the fact that they served to offer fresh points of attack against slavery in the Congressional debates. Arkansas was duly admitted in 1836 with its constitution unamended. This instrument was regarded as being extreme, even by many pro-slavery men, who saw in it an additional weapon in the hands of their enemies. The Democratic party was never better organized than under the administration of President Jackson, who was the embodiment of the highest ideals of its controlling wing, the element pledged to the protection and propagation of slavery. Under Jackson's administration, anti-slavery men were either driven out of the South or silenced. The Lundys and Embrees could no longer remain in Tennessee and Garrison was clapped into jail in Baltimore, where he was incarcerated for seven weeks for his attack upon one Captain Todd, a Yankee skipper, whom Garrison charged with smuggling slaves into the South. Of course Garrison could not sustain the charge before a Baltimore jury and was consequently convicted of libel and sentenced to prison, where he remained until Arthur Tappan, Esq., of New York, paid the fine and secured his release. The pathetic story of Rev. Charles T. Torrey may still be read engraved upon the monument erected over his grave in Auburn, the cemetery in Boston where so many of the illustrious sons of Massachusetts sleep. Young and enthusiastic and zealous for what he thought was right, Mr. Torrey went to Baltimore in 1846 to work in the interest of the slaves, went to prison, went to his death there at the age of thirty-three. When it was known that this young clergyman's health had been broken and that he was dying of consumption, hundreds of people signed a petition to the Governor of Maryland praying for a pardon, for the release of Torrey that he might come home to die, but these prayers were in vain and he was doomed to die in his dungeon. Nor was the sentiment of Boston a great deal better than that of Baltimore at this time. On being released from his Baltimore prison Garrison went to Boston, where he immediately began

to publish his "Liberator" and was immediately mobbed by the "respectable citizens" of the city, who, after destroying his little printing office and breaking up his press, dragged the intrepid editor through the streets with a rope about his body. But Garrison fared a little better than Rev. Elijah P. Lovejoy did at Alton, Ill., in 1837. Lovejoy's press was not only broken up and thrown into the river, but Lovejoy was murdered. And it may be questioned whether any event that ever happened during the whole anti-slavery agitation, excepting the raid of John Brown, damaged the cause of slavery to such an extent as did the death of Lovejoy. The mobbing of Garrison stirred Boston, but the world was aroused by Wendell Phillips, who took the lecture platform against slavery on account of the death of Lovejoy. Whether it was due to the cause he advocated or to his exceeding natural ability, it is pretty generally conceded that Wendell Phillips had no peer as a platform lecturer and orator, certainly none in his day. Cultured Boston might affect to ignore Garrison, but Phillips was one of her sons, one of her best, one of her most cultured, and when he made his memorable reply to Attorney-General Austin, on the occasion of the Lovejoy meeting at Boston's historic hall, they discovered that he was one of their most gifted.

After the memorable fight over the Missouri Compromise in 1820, slavery became and remained the leading question before the country,—alive, active, omnipresent. The abstruse disertations of essayists and scholarly sermons of men like Channing began to give way in northern pulpits to the glowing eloquence of men like Parker, Cheever and Furness; the comparatively polite and apologetic arguments of men like Lundy, in his "Genius of Universal Emancipation" were being drowned by the thunders of a Garrison from his tripod in the office of the "Liberator," and many who in 1820 agreed with Representatives Talmage and Taylor, in their advocacy of gradual emancipation, found themselves in hearty accord with Slade and Giddings, in their advocacy of immediate emancipation in 1837. It therefore happened that when President Van Buren entered upon his administration in 1837, he not

only found the slave power at its height in the South, but he found New England and large sections of the North on the verge of inaugurating a united opposition to the system while the news from the West was exceedingly gloomy as to any further extension of the institution in that section. Sedate discussion of the question from the easy chair of the school man was approaching an end, while the common people were entering the list who, in language, if less elegant, still not less pointed, referring to the slave-holder as "dirty." In the streets of northern cities where southerners were once fawned upon and flattered, children would now snicker at them and hurl the opprobrious epithet as they scuttled into alleys. There was to be no more fencing with slavery with buttons on the foils. And although Garrison and his school continued to pin their hope to moral suasion, James G. Birney, of Kentucky, who had liberated his slaves and joned Garrison in Boston, had already begun his appeal to the ballot through the medium of his "Liberty Party," to which there was a hearty response. The big politicians, however, were making every effort to suppress the discussion to keep it from becoming a national issue upon which they would have to declare themselves. President Van Buren, the Halifax of his party and of his day, seeing the drift of affairs, made no reference to slavery in his first annual message. Notwithstanding this omission, like Banquo's ghost, the question would not down. The first constitutions adopted by many of the states immediately after the Revolution were comprehensive in their democracy and quite liberal in their provisions with reference to colored people. At the behest of slaveholders nearly or quite all of these constitutions were changed or amended between 1830 and 1840, so as to provide a legal status for free Negroes as near to the level of the slaves as possible, and in order to make freedom appear less desirable still, the free Negro was practically outlawed. The frequent sight of some poor colored person being dragged through the streets of northern cities by kidnappers in the employ of slaveholders, or the sight of this sordid horde of thugs, generally regarded by the public as being far beneath the social level of

the meanest dog-catchers, chasing some panting fugitive, the mobbing of anti-slavery speakers, which culminated in the murder of Lovejoy, about this time, served to make Van Buren's silence on slavery count for but little. For an age Quakers had been bombarding Congressmen with petitions touching the question; for a long time, too, these petitions had been denied a hearing in Congress. But state legislatures now began to adopt resolutions concerning slavery which they demanded their Representatives at Washington to present. And so it happened that although President Van Buren's message gave no pretext or excuse for opening the discussion in Congress, Mr. Slade had placed in his hand a resolution adopted by the State of Vermont, which he represented, demanding the abolition of the slave trade in the District of Columbia, which he desired to have read by the Clerk of the House. Congress had already decreed that all petitions touching the slavery question should be neither read nor discussed within its walls. This instrument, however, emanated from a sovereign state, whose accredited representative was endeavoring to carry out an imposed obligation. Nevertheless the presentation of this resolution caused the greatest excitement. The members from the South rose en masse and above the sound of the uproar, the voice of Mr. Wise was heard calling to his colleagues from Virginia to leave the hall and he led them out. Mr. Rhett, of South Carolina, followed suit, and while Mr. Slade was endeavoring to read his resolution, most of the members from Virgina, South Carolina and Georgia left the chamber. These seceding members met in a committee room and resolved: "That all petitions, etc., touching slavery be laid on the table without being read, referred or any other action taken on them," and made the adoption of this by the House the condition upon which they would return to their seats. The House eagerly adopted this measure by a vote of 122 to 74, 38 of the affirmative votes coming from the Free states.

Mr. Calhoun now brought forward and offered a series of five resolutions, as follows: First, "That the states entered this Union simply for the purpose of securing its social and

political advantages; second, That each state retains power over its domestic institutions; third, That the Federal Government is bound to protect these institutions; fourth, That slavery is an institution of the southern states; fifth, That intermeddling with slavery is dangerous." In these resolutions Mr. Calhoun showed that he was not only a high priest of the slavery cult, but that he was the vicar-general of the old school of anti-Federalists and the grand chancellor of the school of State Rights for which he came near being hanged by Andrew Jackson. Nor will any impartial historian impugn the sincerity of Mr. Calhoun and his followers. The spirit of these resolutions reached far beneath the question of slavery and touched the very foundation of the difference between the political system of Jefferson and Hamilton, a difference unquestionably honest between two of the most illustrious patriots the country ever produced, a difference upon a question lawfully debatable among us until after the Civil War, which was induced by it, and only partially settled by the results of that event, and which our Congress and Supreme Court have since been vainly trying to reconcile—between the powers, authority and jurisdiction of the states and the power, functions and jurisdiction of the nation. When Mr Calhoun came so near to serious trouble during the administration of President Jackson, the matter did not concern slavery but the tariff. The Calhoun resolutions, therefore, provoked a long and searching debate before the Senate adopted them by the decisive vote of 35 to 9. The House adopted a set of similar resolutions at the beginning of its session on December 3, 1838. But notwithstanding such resolutions the Congressional opposition to slavery continued to increase in spirit and bitterness. Mr. Giddings launched his first lengthy attack on the floor of the House on February 13, 1839, in connection with a proposed appropriation for a bridge across the eastern branch of the Potomac in the District of Columbia. Young and impetuous and freshly commissioned by his constituents, Mr. Giddings handled the subject in a manner that created a sensation among his older colleagues who had been brow-beaten by southerners so long

that the latter had become to regard their arrogant domination as a right and privilege on the one hand, to which, on the other, the former assumed to regard it as their duty meekly to submit. Giddings' speech was the topic of conversation about the capitol for days, while the speaker himself was looked upon as an impudent monstrosity by Congressmen from the South and as a very daring and, perhaps, dangerous fellow by all the rest. Old politicians, who had for years been vassals of the slave power, doubting the extent to which Giddings represented the sentiments of his constituents, strained their ears for what they thought was the sure approach of a storm of protest, but nothing was heard from the West but commendation. But worse still, the cloud and scowl caused by his speech had not passed from the brow of southern Congressmen nor had the shivers ceased to chase up and down the backbones of those from the North before Hon. John Jay and forty other distinguished citizens of New York petitioned Congress, praying for a general emancipation Act to take effect July 4, 1842. This petition was placed in the hands of John Quincy Adams, who on February 25, 1839, asked that the rules might be suspended for the purpose of enabling him to lay the matter before the House. Of course the request was denied without hesitation and with scorn[6] and so the matter died in the hands of the venerable statesman.

In the Twenty-sixth Congress, which met in 1839, there were four open and avowed opponents of slavery, John Quincy Adams, of Massachusetts; William Slade, of Vermont; Joshua R. Giddings, of Ohio, and Seth M. Gates, of New York. Besides these members, among other things to enliven this session was the Texas question. One of the unfortunate things about slavery was the fact that it could never get enough room, a situation that constant attempts were made to remedy, but which was as impossible as it would be for an individual to acquire all the land adjoining his own. The smoke of our battles with the Indians in the second Seminole War had not ceased to drape the horizon,

6. Giddings, p. 132.

nor had the eyes of the Cherokees been dried of the tears for their ancestral wigwams in Georgia and the hunting ground from which they had been expelled, before we had begun to conspire and intrigue against Mexico for the acquisition of Texas. For years the plot had been thickening; for years we had been throwing into the witches' cauldron of conspiracy and mendacity every ingredient calculated to make it boil and bubble until there was an ostensible revolt against Mexico on the part of the inhabitants occupying the Texas territory. Our part was to encourage the Texans to pretend to establish an independent government and to hoist its flag with a lone star in 1836. After a short interval of this mimic show and stage play, these revolutionists, led by the hirelings of the United States which, at the time, was but another name for the slave power, applied for annexation to our Union. Now while we naturally wanted Texas, we naturally did not want war, but we just had to have Texas. The Mexicans and everybody else knew that we were behind the scheme, and since there was little hope of deceiving anybody, after the so-called secession of Texas from Mexico, we immediately began a campaign to educate our people to the point of seeing the necessity of incorporating Texas into the Union. Accordingly the Texas question was kept before Congress on one pretext or another in order that Congress might be used as the central propaganda. If nothing else should be available, some one would bring forward a claim for a slave who was alleged to have escaped, when a lengthy, if not learned, speech would be made on the ways and means of preventing such catastrophies, especially in states adjoining Mexico. There were many sharp debates in connection with such matters, which at times went from the sublime to the ridiculous. There was, for instance, a bill before the House for the reimbursement of certain southern citizens on account of money alleged to have been spent by them for bloodhounds imported from Cuba, along with their Spanish trainers, and used in the Seminole War. These hounds, it was claimed, were brought from Cuba for the purpose of running down Negroes and Indians engaged in the war who made their headquarters in the

Florida swamps. The experience of the Georgia expedition and of Major Dade had taught our soldier slave hunters something of the danger of entering these swamps, and so a resort was had to bloodhounds. When this particular claim was under consideration and payment was about to be voted, Mr. Adams, knowing that he would not be allowed to speak, and that at all events his objections would be futile, offered a facetious resolution, gravely inquiring into the pedigree of this new class of soldiers, the terms of their enlistment and whether or not their "widows" were to have the benefit of our pension laws.[7] Of course Mr. Adams' resolution was not considered any more than a serious objection on his part would have been.

At this particular time, however, unusual efforts were made to shut off the agitation of the slavery question as much as possible on account of the embarrassing effect upon presidential candidates about to be nominated. The tariff question was, therefore, given the greatest prominence, though it was well known that the Texas situation would have to be dealt with by the incoming administration. The Whigs nominated William Henry Harrison, a man possessed of the most choice prerequisites for the presidency in the eyes of the politicians of his day; he had a good war record and a better pro-slavery record. From 1802 to 1807 he had made a most gallant fight for the introduction of slavery into Indiana,[8] which effort had failed through no fault of his but simply because the people would not have slavery. The forces favorable to slavery and those against it had a most conclusive test of their respective powers during the contest for the election of a delegate to represent the territory in Congress. A native Virginian, one Mr. Randolph, at that time the Attorney-General of the territory, was the pro-slavery candidate for delegate, and had the most energetic support of Harrison, then Governor, who took the stump and told the people that if Randolph were elected the Ordinance of 1787 would be repealed and slavery permitted in that section. Opposed to Randolph was a young

7. Congressional Globe, Mar. 9, 1840.
8. Amer. Conflict, Vol. I, p. 52; Annals, March 2, 1803, ibid. November 13, 1807.

man from Pennsylvania, Jonathan Jennings by name, and described as "an inexperienced youth;" still Jennings beat Randolph on this clear-cut issue by a vote of 3 to 1.[9]

Having made such a record, General Harrison was exceptionally strong as a candidate for the presidency, and, after a hard cider campaign, and one in which other such material made strong arguments, he was duly elected. President Harrison died within a month after his inauguration and what course he would have taken, had he lived, on the question of admitting Texas, is not known. It was generally understood at the time, however, that the Whig party was opposed to it.

In the meantime, Adams and Giddings availed themselves of every opportunity to prod the adherents of slavery on the floor of the House. Giddings boldly introduced a set of radical anti-slavery resolutions, for which he was censured by that body in March, 1842. He immediately resigned and returned home, only to be sent back within five weeks by an overwhelming majority of the people of his district. Mr. Adams, also, was hauled up, but he managed to get the privilege of making a defense, a privilege denied to Giddings; and when he was asked how long it would take him to prepare and make his defense, quietly, replied that "it took Burke six months to prepare and deliver his speech in connection with the trial of Warren Hastings, but that he thought he might be able to get through with his in "*ninety days.*" The resolution of censure was laid on the table, for it was believed that if "Old Adams," as some who disliked him called him, instead of "Old Man Eloquent," as he was called by his admirers, were given three months to speak, the whole world of slavery would be shaken to its center; besides, damaging criticism would follow the expenditure of money and the suspension of public business for such a purpose for so long a time. None of these things seemed to move Mr. Adams, however, nor to balk him in his purpose to annoy his opponents. The House was called upon to consider a bill for an amendment to the charter of Alexandria, Va., extending the suffrage to all "free

9. Congressional Globe, First Session, Twenty-ninth Congress, p. 180.

white citizens." Mr. Adams promptly moved to strike out the word "white" and his insistence upon the consideration of his motion caused the whole thing to be laid upon the table rather than have any discussion.

The sentiment against slavery was now noticeably on the increase and was daily assuming a more defiant tone. In 1844 Mr. Adams presented a petition from citizens of New York praying Congress to pass some law relieving the people of the Free states from contributing to the support of slavery. The petition was not only read but debated, a thing that had not occurred in connection with such matters for a long time. This petition was even referred to the Judiciary Committee by a vote of 97 to 80. A similar request, emanating from the Legislature of Massachusetts reached Congress about the same time, and Mr. Adams had it referred to a special committee, of which he was made chairman. The report of this special committee, after reviewing the subject under consideration at some length, called attention to the aggressions of slavery and its imposition upon the Free states and closed by declaring that "the Declaration of Independence constituted a pledge in the name of God solemnly given by each state, to abolish slavery as soon as practicable and to substitute freedom in its place." The report was laid on the table.

The tide had turned against slavery. The system received a mortal blow when England abolished it in the West Indies. The civilized world was bound to take notice of the act. With freedom in Canada and in the northern portion of the United States and freedom in the islands on the south, the fate of slavery in the United States was sealed. It had to die.

CHAPTER V

The Twenty-eighth Congress—The Twenty-ninth Congress (1845)—The Constitution of Florida—The Mexican War—The Wilmot Proviso—The Thirtieth Congress (1847)—Hale, the First Anti-Slavery Senator—Palfrey Enters House—The Death of John Quincy Adams.

The treaty of Ghent signed December 14, 1814, and proclaimed by President Madison February 17, 1815, under which peace was concluded with Great Britain after the War of 1812, among other things pledged the parties to mutual cooperation in any and all steps necessary for the suppression of the African slave trade. It appears that England attempted in good faith to carry out this provision but that the United States was still inclined to connive at man stealing on the part of Americans who pretended to be engaged in legitimate trade along the African coast. Under England's interpretation of the treaty, any vessel suspected of being engaged in the slave trade might be held up and searched. It therefore happened that several American vessels were searched and caught with the goods, as they say. Notwithstanding our treaties and conventions touching this question and their well-known violation on the part of our citizens, the Senate adopted a resolution December 27, 1842, demanding to be advised by the President as to what course this government might take in relation to the violations of these conventions; also what danger there was that the laws and obligations of the United States in relation to the suppression of the slave trade might be executed by others. This was evidently intended as a slap at President Tyler for having dared to call attention in his annual message just transmitted to Congress, to the necessity of our performing our part of the contract under the treaty of Ghent in connection with the suppression of the African slave trade, otherwise we might find ourselves in the position of seeing others perform for us under circumstances that would be more or less humiliating. President Tyler responded to this demand in a tone so sharp that the

instigators of the resolution were glad to let the matter drop. The President plainly told the Senate in his communication, a thing that they well knew, to wit, that the African slave trader had been declared a pirate and as such had no right to claim the protection of the government. When this provision was originally incorporated in the treaty referred to, objection was raised to it and the question was debated by the United States with England for ten years before the convention was concluded and signed at London March 13, 1824, by the plenipotentiaries of both governments,[1] but we were in no hurry to ratify these arrangements, and while haggling over the boundary question, the slave traders still hoped to evade the provisions applicable to them though they had been already definitely settled. Indeed, although we had gone so far as to declare these traders pirates by an Act of Congress, and all the Powers of Europe had combined to aid in their suppression, this species of criminal long survived to harass us in our foreign relations even after we had furnished our quota of the international fleet to patrol the African coast as appears from President Tyler's final message in 1844. The nefarious trade went on until England formed something like a habit of seizing and condemning these pirate ships, which generally turned out to be American. The year 1845 opened with war clouds hanging dark and damp over the country. After maintaining a so-called independence for more than eight years, backed by the moral if not the material support of the United States, Texas had at last been received into the Union, and all knew that this would mean war with Mexico, President Tyler having exerted himself to the utmost for the consummation of the scheme. This made another large slave state which it was hoped might eventually be cut up into several slave states. Then, too, about this time, Florida, following the example of Arkansas, adopted a constitution under which her citizens were prohibited from emancipating their slaves, made application and was received into the Union in 1845.

Texas had been admitted during the second session of the

1. Eighth Annual Message President Monroe, December 7,1824.

Twenty-eighth Congress, and while President Tyler was zealous for the consummation of the scheme, nearly the whole of the northern wing of his party (Whig) was against it. And in this connection there is said to have been a bargain struck between the northern Democrats and the southern contingent of that party under which the former agreed to vote for the admission of Texas in consideration of the latter agreeing to vote for the exclusion of slavery in the organization of the Territory of Oregon.[2] Oregon had been jointly occupied up to this period by the United States and Canada, but the boundary question had been about settled and the territory was now in position to be regularly organized. Whether there was any bargain of the sort referred to or not, it is worthy of note that the Oregon bill, the 12th section of which forever excluded slavery, was passed by the House without a single word in opposition, by a vote of 131 to 69, on January 11, 1847. The Senate, however, did not take up the Oregon bill with anything like enthusiasm; indeed, this body pigeon-holed the measure and compelled the territory to wait until after Texas was secured. These events naturally aroused and sustained the anti-slavery sentiment and tended to solidify it throughout the country; nor did anti-slavery men in Congress neglect to fan the blaze. At the beginning of the Twenty-ninth Congress (December 1, 1845) Erastus D. Culver, a Representative from New York, presented a petition numerously signed by members of all political parties of that state, praying Congress for the abolition of slavery in the District of Columbia. The so-called "gag rule" under which such matters were laid on the table without debate had been rescinded, still the influence of that rule had not been sufficiently relaxed as to permit of a different course being pursued in the case of this petition, which was accordingly laid on the table without debate. But the news of such a petition could not help but be spread abroad through the country.

The preparation for the Mexican war, which was now upon us, tended to obscure the slavery question to some extent dur-

2. Giddings, p. 248.

ing the next two years, and aside from the usual batch of petitions intended to affect the situation, particularly in the District of Columbia, little or nothing was done. The great majority of the American people, however, never heartily approved of our war with Mexico, and consequently hostilities did not proceed very far before strenuous efforts were made to bring the conflict to an end. Of course our diplomatic efforts in this direction never contemplated the giving up of Texas, the acquisition of which having been the very object for which the war was begun. The fact that we demonstrated our intention and power of taking the territory, however, made it easy for us to offer Mexico a financial consideration notwithstanding the fact that the war had cost us some three hundred million dollars and about eighty thousand lives.[3] Tentative terms having been arranged, Congress took under consideration a bill providing for the appropriation of three million dollars to be applied on account of this settlement. There was no objection to this appropriation as we were particularly anxious to get out of the muddle. When the measure came to a vote in the House, however, Mr. Ashman, of Massachusetts, offered a proposition to the effect that slavery should be forever excluded from any territory that we might acquire from Mexico through the exigencies of this war.

The Speaker ruled this amendment out of order. But the fact that the country knew what had caused the war with Mexico and was generally criticizing the national government for its course in the matter, inclined Congress to desire to settle this controversy as quickly and as quietly as possible, so the holding up of this appropriation by the anti-slavery forces was embarrassing. A few days after Mr. Ashman's amendment was ruled out, David Wilmot, a Representative from Pennsylvania, brought forward his famous proviso which aimed at the same result as that contemplated by Mr. Ashman. This passed the House February 15, 1847, by a vote of 115 to 106. The debate on the measure was short but sharp. Under this provision slavery had to share the fruits of the Mexican war with freedom; it had to make it-

3. Giddings, p. 253.

self contented with Texas while the rest of this territorial acquisition was dedicated to freedom.

The first session of the Thirtieth Congress, which opened in December, 1847, was considerably changed in its personnel. The Senate now for the first time had a member who was not only an avowed opponent of slavery extension, but one who had been a storm center in a contest based squarely upon that issue in his state. This was Hon. John P. Hale, of New Hampshire. The little company of out-and-out anti-slavery men in the House, too, had a valuable accession in the person of Mr. John G. Palfrey, of Massachusetts. Mr. Palfrey made his first important speech on the slavery question early in January, 1848, in connection with President Polk's message concerning Mexico. His reputation for learning caused his utterances to be listened to with great attention and respect, and this speech on Mr. Polk's message relative to the Mexican war, which could hardly be treated without involving slavery, so pleased the venerable Mr. Adams that he exclaimed from his seat: "Thank God. The seal is broken, Massachusetts speaks."[4]

New Hampshire, which had hitherto been perhaps the most pro-slavery of all the eastern states, was now, since the Hale campaign, about in the lead against any extension of the system. On December 30, 1847, Mr. Amos Tuck, a Representative from that state, presented a petition from Joseph Lindsay and seventy other prominent persons of Philadelphia, Pa., praying Congress to dispose of the public lands and use the proceeds for the abolition of slavery. Although the petition, like all others of the kind, was laid on the table, the vote in this case being 86 to 70, the matter attracted unusual attention because of the prominence of the petitioners and the apparent definiteness of their purpose. The outside pressure upon Congress was increasing daily and this pressure was constantly stimulated by frequent happenings in Washington under the noses of Congressmen. For instance, there was a colored man employed in the house at which Mr. Giddings and a number of other Congressmen boarded. The owner of

4. Giddings, p. 266.

this man had agreed to allow him to purchase his freedom and most of the money had been paid on account, but just before the final payment was to have been made, the poor wretch was seized and sold into perpetual slavery by his treacherous owner. Mr. Giddings, among others, saw this faithful servant bound with ropes and carried off by a heartless slave trader. When this poor fellow's wife learned what had happened she slew her little girl and herself. A few days later Mr. Giddings saw a colored girl of nineteen years, who had been given permission to visit her mother, who lived across the eastern branch of the Potomac, and was on her way there. She discovered that she was being pursued by slave catchers or patrolmen, and bounded over the rail of the bridge to death in the river. Mr. Giddings was deeply moved by these experiences, and on January 17, 1848, introduced in the House a resolution of the following tenor: "That a committee be appointed to report some measure repealing all laws, ordinances, regulations of all kinds whatever under and by virtue of which persons may be bought or sold in the District of Columbia." At the same time he offered another resolution with preamble setting forth what he had witnessed as above mentioned in which he peremptorily demanded that Congress should either stop the slave trade in the District of Columbia or remove the capitol to some free state. A motion was made, as usual, to lay these resolutions on the table and on the first vote the motion was lost by a vote of 85 ayes to 86 nays. Another vote was forthwith secured and in this the slave party triumphed by a vote of 94 to 88, but the narrow escape experienced by the slave party on this occasion created a sensation.[5] Determined to force the issue, Mr. Giddings, on January 31, introduced a set of similar resolutions and these were followed by resolutions introduced by Mr. Tuck on May 20, designed to accomplish the same purpose. Although these resolutions were laid on the table, they served to annoy and to sting the slave party. In the meantime Congress was being flooded with petitions and resolutions eman-

5. "There was great confusion and much excitement in the House," said the Reporter.

ating from state legislatures and benevolent organizations bearing on the question. The slave power had not experienced such bold defiance for more than a generation and these radical resolutions following a phillipic against the system delivered by Mr. Palfrey, on January 26, 1848, in which he referred to our first fugitive slave law as "the heinous crime of '93" were very distressing. Mr. Palfrey's opposition to slavery was especially hurtful to the slave party because all felt that his actions were founded on deep convictions rather than mere policy. His father had resided in the South a great portion of his lifetime and held slaves; these the young Mr. Palfrey promptly liberated when they fell to him on the death of his father, and returned to Massachusetts. Thus Massachusetts continued to be as conspicuous in the anti-slavery cause within Congress as on the outside. "The Old Man Eloquent" (John Quincy Adams) who had more than glorified the name of his state in this struggle, especially in his championing of the right of petition when it was smitten from the hands of the citizens, was now dead, having passed away February 23, 1848. Mr. Palfrey by this time had been in the House just about long enough to justify his reputation for learning and so, in a manner, he filled the place of Mr. Adams until the coming of Sumner, "the noblest Roman of them all."

CHAPTER VI

The Formation of the Free Soil Party—The Beginning of the End of the Whig Party—Presidential Candidates of '48—Sectionalization of Political Parties—Election of Taylor.

The year 1848 was a presidential year, and as might have been expected from the character of the men constituting the Massachusetts delegation in Congress, and the fact that the question of slavery or no slavery had been made the main issue in the state campaign that resulted in the election of the legislature which sent Hale to the Senate from New Hampshire, signs of the intention to make the slavery question a national issue in politics soon became manifest. The country has never lacked for men willing to serve it as President whatever the issue or platform upon which candidates are required to stand. And so, besides the regular Democratic and Whig parties, the anti-slavery men constituted themselves into a party after swallowing up Birney's Liberty party, and came out under the name and style of Free Soil party. The consummation of the Texas troubles, which resulted in the Mexican war, had so aroused the indignation of many northern Democrats and Whigs that they joined this new movement in great numbers largely as a rebuke to their leaders who had allowed themselves to become mere tools in the hands of the southern wing of their respective parties in support of an institution which the non-slave-holding states had long since learned "to oppose in politics, repudiate in economics and to loathe in morals." As long as this opposition in politics, etc., etc., was based on mere sentiment, it did not manifest any particular strength among voters outside of lecture halls, but when men began to reflect that the Mexican war was not the only one that slavery had brought upon the country, it being well known that the Indian wars traced their origin to the same source, they began to ask themselves when and where taxation and the slaughter of men on account of slavery would end.

Not a few of the old leaders found themselves in a dilemma. Webster, in a burst of pathetic eloquence, after delivering himself of an inimitable eulogy of his party, dramatically asked of his listening constituents: "If you put me out of the Whig Party where will I go?" Mr. Webster's question was not so hard to answer by men who put principle above policy and who never hoped or even desired to be President. It was doubtless hard for one like Mr. Webster to appreciate the force of the silent revolution in progress in the United States between 1820 and 1850. The constant sound of his own praise rendered him less capable of catching the ominous notes of warning. The time had come, however, when new leaders were demanded to meet the new condition.

A second or honor term as President has always been greatly desired by those who have once served. Mr. Van Buren cherished the hope of being given a second term, but as he had displeased the South by certain utterances besides having committed himself[1] to an anti-Texas policy during his administration, his party refused him a second nomination. Mr. Van Buren was more out of relation with his party than ever in 1848. The Democrats of his state (New York) were completely factionized; there were the anti-Texas men, or "Barn-burners" (so called because it was claimed that the South would secede unless Texas should be admitted, and those who opposed it were likened to the farmer that burns down his barn to get rid of the rats); there were Van Buren men and "Hunkers" or "northern men with southern principles;" and there were "Soft Hunkers" or those who were less violently pro-slavery.[2]

And when the Democratic Convention of 1848 met at Baltimore there were two sets of delegates from New York: the "Barn-burners," led by Samuel Young, and the "Hunkers," led by Daniel Dickinson. The convention voted to seat all of these delegates, but this failed to bring harmony and a split, led by the Massachusetts Free Soilers, who were subsequently

1. Morse's Van Buren, pp. 347-65, Amer. Conflict, Vol. I, p. 152.

2. During and just after the war, the term "Copper Heads" was applied to "northern men with southern principles," among whom C. L. Vallandingham, of Ohio, and Fernando Wood, of New York, were conspicuous.

joined by malcontented fragments now rapidly crumbling off from both of the old parties, called a convention that met at Buffalo, N. Y., on August 7, when and where Martin Van Buren and Charles Francis Adams were nominated for President and Vice-President respectively. The platform on which these candidates invited the suffrage of the voters was both explicit and concise.[3] It declared a belief not only in slavery restriction but in slavery extinction. One of their significant resolves was as follows: "That the proviso of Jefferson prohibiting the extension of slavery after 1800 in any and all territories of the United States, northern and southern; the votes of six states and sixteen delegates in the Congress of 1784 for the proviso to three states and seven delegates against it * * * and the entire history of that period shows that it was the policy of the nation not to extend, nationalize or encourage slavery, but to limit, localize and discourage it; and to this policy which should have never been departed from, the government ought to return." These resolutions were reported by Gen. B. F. Butler, and concluded as follows: "We will inscribe on our banners, Free Soil, Free Speech, Free Labor and Freemen, and under it we will fight on and ever."[4]

While Mr. Van Buren did not receive any votes in the electoral college, his popular vote was 291,342.[5] He ran particularly well in Massachusetts, and it is said that the size of his vote in that state was largely due to the activity and influence of Charles Sumner.[6] This was the old Birney party which was organized just before the campaign of 1840, when it stood for the immediate and unconditional emancipation of the slaves and differed from Garrison's movement only in method. By 1848 this party had received large accessions from the ranks of both Whigs and Democrats in the North and had had injected into it substantial modifications; even the name had been changed from Liberty party to Free Soil party and its position on the slavery question had changed

3. Stanwood's Pol. Conventions, 1848.
4. Stanwood; also Morse's Van Buren, 365.
5. Morse, p. 368.
6. Morse, p. 369.

from the advocacy of slavery extinction to the advocacy of slavery restriction. The bold resolution passed by the Buffalo Convention touching slavery as above related, was doubtless adopted to please the old Birney men who were known to have been some sixty-eight thousand strong in 1844, and were considered to be stronger still in 1848, as the annexation of Texas and the Mexican War had almost completely sectionalized the old political parties. The southern Democrats and Whigs coalesced for the protection of slavery, or rather the southern Democrats, who had always sustained the slave power, absorbed the southern Whigs, while the opponents of slavery in the North, East and West were beginning the coalescence that culminated in the formation of the Republican party of '56. The opponents of slavery, however, were far from being united in 1848. Among them there were Free Soilers, "Know Nothings," and those who still called themselves Whigs. It took the Kansas-Nebraska troubles and the Omnibus Bill of 1850 to bring these discordant elements together. Matters stood thus when Taylor was elected in 1848.

CHAPTER VII

Thirtieth Congress, Second Session—The Gott Resolution for Abolition of Slavery in District of Columbia—Slavery Excluded from California and New Mexico—South Carolina Hints at Secession and Civil War—Thirty-first Congress—Fugitive Slave Act—Protest of South.

Mr. Van Buren, on his platform advocating the restriction of slavery, made a showing in this campaign that attracted nation-wide attention and resulted in giving great impetus to the reform movement. When at the opening of the second session of the Thirtieth Congress in 1848, Mr. Palfrey offered a bill for the abolition of slavery in the District of Columbia, it was not surprising that only twenty-one members of the House of Representatives from free states could be found who were willing to have their names recorded against the measure. This number, however, was sufficient to defeat the bill. Closely following the Palfrey measure, Mr. Daniel Gott, of New York, on December 30, 1848, introduced a most radical resolution, in which slavery was denounced in the most scathing terms and in which he peremptorily demanded the abolition of the slave trade in the District of Columbia. This resolution was adopted by a vote of 98 to 88, amid the wildest excitement. Just before the vote was taken, Mr. Venable, of North Carolina, had the question so divided that each member was compelled to have his name recorded directly for or against slavery. Every member from slave states voted in the negative, while all but fifteen from the free states voted in the affirmative. Even before this, Mr. J. M. Root, of Ohio, had introduced (December 13) a resolution instructing the Committee on the Territories to report a bill excluding slavery from New Mexico and California, which had been adopted by a vote of 108 to 80, every Whig and all but eight Democrats from the North having voted for it. Pursuant to instruction, the Committee on Territories reported a bill in accordance with the Root resolution in the

early part of 1849, which was passed by the House after a short debate, by a vote of 126 to 87, though every member from the slave states voted against it. The Senate strove to defeat this bill, and so it was held up and debated from time to time until the last day of the session before it was voted upon and passed by that body.

For years the slave-holders had led in the social and political life about Washington, where they were wont to stride about followed by a retinue of servants contemptuously scowling at "Mud Sills" from the West and "Dough Faces" from the North and East. They had come to regard any interference with their practices as an unfair assault upon their rights. Nor were they at all backward about giving expression to their feelings of resentment. On February 13, 1849, the Legislature of South Carolina transmitted to Congress and to the governors of the several states, copies of the following: "Resolved, unanimously, that the time for discussion by the slave-holding states of their exclusion from the territory recently acquired from Mexico is past, and that this General Assembly, representing the feeling of the State of South Carolina, is prepared to co-operate with her sister states in resisting the application of the principles of the Wilmot Proviso to such territory at any hazard.[7] The slavery restrictionists heard these resolutions with a stolid indifference bordering on contempt. But these were exciting days in Congress and there were many happenings on the outside which contributed to the general turmoil. On the 17th of April (1848) a party of some eighty slaves was apprehended in an endeavor to effect their escape from the District of Columbia and all were brought back and lodged in the district jail. Mr. Giddings promptly introduced a resolution inquiring by what authority the United States jail was used for such purpose. Upon the reading of this resolution Mr. Holmes, of South Carolina, declared his intention to offer an amendment to the resolution in case it should be pressed, so as to have it include in its scope the inquiry as to whether the "scoundrels who caused the slaves to be there should not be hung." The matter caused

7. Globe Second Session, Thirtieth Congress, p. 519.

the greatest excitement in the House; members arose en masse and the Speaker was compelled to suspend everything for some time before order was restored. The populace in some way conceived the notion that Mr. Giddings had something to do with the plans of these slaves in their attempted escape, and for two nights a howling mob surrounded his house threatening him and his property. The situation became so acute that Mr. Palfrey offered a resolution inquiring into the behavior of this mob, and in the midst of the flurry caused by the reading of this proposition, Mr. Giddings arose and said that he had just visited the prisoners in his capacity as a man and a member of the House, and told them that they should have counsel and their rights protected. "Now let gentlemen say what they please," said he defiantly.

The old question as to whether slaves were property again had to be answered by the House in January, 1849. A man by the name of Pacheco claimed to have lost a slave[8] through the exigencies of the second Seminole War, in 1835, and accordingly petitioned Congress for relief. The Military Committee, to which the matter was referred, had made a favorable report, but when it came to a vote in the House that body refused to recognize the claim by a vote of 91 to 89. In commenting upon this vote, Mr. Giddings said: "It sorely mortified and depressed the slave-holders as it showed that southern influence and party dictation could no longer subject the consciences of northern men to the barbarous doctrine that men are property."

The only object in allowing slave-holders to count three-fifths of their slaves for the purpose of representation at the time of the adoption of the Constitution was to equalize as far as possible the influence between the non-slave-holding and the slave-holding sections. This arrangement had been seriously affected by the passage of the Ordinance of 1787 which had the effect of excluding slavery from the great Northwest Territory. Even if Congress at this time had been willing to repeal this Ordinance, it would have availed

8. This man, claimed as a slave, was said to have been a linguist and conspicuous for his general intelligence; and that it was he who led Major Dade into the disastrous ambush. See Exiles of Florida, p. 106.

the slave-holders little, for the people who were settling in the West positively refused to permit slavery, as had been evidenced by the defeat of the attempt on the part of William Henry Harrison to introduce the institution among them. In the beginning the slave-holding and non-slave-holding sections had started out practically even both as to population and wealth, but now after a period of only fifty years the non-slave-holding section had trebled the South in both population and wealth; even those born in the South were rapidly emigrating, while foreign immigration eschewed that section altogether.[9] Efforts made to secure a foothold for slavery in connection with the acquisition of new territory had been anything but encouraging. When Louisiana was purchased there was comparatively only a small portion of the territory in which slavery was permitted; slavery spread over the whole of Florida it is true, but when this state, poor and barren, was acquired, the great manufacturing State of Maine came in to more than offset it. When we seized Texas, another barren waste, for the benefit of slavery, there came with it California and Oregon with their rich mines, into which slavery could not enter. An Ostend Manifesto had failed to secure Cuba; a Walker's Expedition had met with unmerciful disaster in Central America. These defeats rendered the South desperate and the only possible hope left to them was in the direction of making a more determined stand for the control of more of the territory which had been acquired for the Union through their ingenious manipulations. The fair and square issue, therefore, as to whether slavery should be extended in the United States was faced with a dogged determination to fight it out. The slave power, being in control of the governmental machinery, was already in position to test the question as to whether there was power in the national government to compel non-slave-holding states and communities to recognize the institution in their laws so as to afford slave-holders the same protection in the enjoyment of slave service in other parts of the country as in the

9. For statistical proof of these facts see speech of Hon. Charles Sumner, United States Senate, June 4, 1860.

South. And while this issue dissolved the Whig party, it clarified the atmosphere by sectionalizing the country. When the Thirty-first Congress met in 1849-50, each section regarded the other as an hostile camp. The avowed supporters of slavery could no longer ride rough-shod over the anti-slavery minority in the House, although few of these minority members had been elected on platforms distinctly pledging them to oppose slavery. Among these, however, whose constituents had exacted of them a pledge in opposition to slavery were Messrs. Tuck, of New Hampshire; Allen, of Massachusetts; King of New York; Wilmot, of Pennsylvania; Root and Giddings, of Ohio; Julian, of Indiana, and Durkee, of Wisconsin. Besides these out-and-out opponents of slavery there were many others ready to join the ranks at the earliest hint from their constituents.

One by one these representatives from the North, whether Democratic or Whig, who lacked the courage to stand up and be counted against slavery, were being relegated to the rear and left at home by the voters. The old political parties were in sore straits and this was especially the case with the Whigs, who had never taken a very decided stand on slavery. The Democratic party, which had always been under the control of the southern planter barons, had the advantage of having a definite policy and one about which all their forces could be rallied. In this desperate situation the best the Whigs could offer was a compromise. And so, on January 29, 1850, Henry Clay, the great Whig leader, offered a set of resolutions, as follows: 1st, That California be admitted into the Union without any restrictions as to slavery; 5th, That it is not expedient for the United States to abolish slavery in the District of Columbia without the consent of Maryland and the people of the District of Columbia and without compensating the owners of slaves in the said district; 6th, That it is expedient to prohibit the slave trade in the District of Columbia; 8th, That Congress has no power over the trade between the states but that it should be regulated by the peculiar laws of the respective states. The second, third and fourth resolutions were of minor importance, but the 7th was

the last as well as the most fateful fugitive slave law ever passed by the American Congress. The whole path of slavery is marked with the whitening political carcasses of statesmen and diplomats, but this particular spot is the very valley of dry bones; a great political party went down here into the gaping arms of death, into a yawning oblivion. About here will ever mope the manes of Webster, muttering in the language of despair: "I made a mistake." Here, Clay, who had rather "be right than be President," fell into the political grave which he unwittingly dug for his party and which Stephen A. Douglas was destined to cover up with his Squatter Sovereignty and then himself fall dead upon it, like a hero in the play. These resolutions were referred to a committee of thirteen, of which Mr. Clay was chairman. The committee having elaborated the resolutions into some forty sections, reported them back May 8th, 1850. This committee was composed of seven members from slave and six members from free states.[10] Several amendments were offered during the consideration of the measure, but all were voted down and the bill was passed by the Senate as it came from the committee on August 13th, 1850, by a vote of 34 to 18. The whole measure was bitterly opposed by the slave holding states because they wanted it explicitly provided and understood that slave holders might take their slaves into any of the territories and have the protection of the laws without any doubt or question. All of the eighteen negative votes came from the South, ten of whose Senators, to wit, from Virginia, South Carolina, Tennessee, Louisiana and Florida, immediately signed a protest which they had read and spread upon the records of the Senate. After this famous measure was duly passed and signed, it was thought that the troublesome question was now out of the way at least so far as national legislation was concerned. But as a matter of fact the law simply irritated matters and made the situation more acute. Slaves continued to escape to the free states, where, as usual, they were enabled to elude their pursuers; and

10. Clay, Cass, of Mich.; Daniel S. Young, N. Y.; Jesse D. Wright, Ind.; Webster, Samuel S. Phelps, Vt.; James Cooper, Pa.; W. R. King, Ala.; Mason, Va.; Downs, W. P. Magnum, N. C.; Bell, Tenn.; Berrien, Ga.

when slave hunters appealed to the authorities, they were coolly told that no law of Congress could compel men to join in the chase after fugitive slaves.

Indeed all attempts to enforce the fugitive slave law proved absolutely futile. People throughout the North felt the deepest resentment at what they regarded as an attempt to compel them to assist in running down and catching men to please slave holders. Mr. Clay and the politicians in general affected to ignore this popular furor as they evidently felt and believed that it would all soon blow over. So confident was Mr. Clay that his famous compromise had settled matters, that he peevishly objected when about this time, Mr. Chase wanted to offer a resolution touching slavery in the territories, and declared "that peace now prevails on the question of slavery," and he "trusted that the Senate would unhesitatingly set its face against any further disturbance of this country." Mr. Clay had hardly taken his seat before Mr. Thomas G. Pratt of Maryland, arose for the purpose of calling up for consideration a bill providing for penalties, etc., to be inflicted on persons found guilty of enticing slaves from the District of Columbia. This incident caused no little amusement, but Mr. Clay evidently saw in it the tragic failure of his labors and the folly of his remarks about the question having been settled. And it may be here noticed that the two pieces of legislation above all others which tend to make the name of Henry Clay famous, were connected with his endeavors to settle the slavery question by compromise, the one occurring at the beginning of his career[11] and the other at its end.

11. Missouri Compromise, 1820; Fugitive Slave Law, 1850.

CHAPTER VIII

The Kansas-Nebraska Troubles—The Repeal of the Missouri Compromise—Sumner in the Senate—Douglas and Popular Sovereignty—Sumner Assaulted by Preston Brooks.

The troubles and complications that arose in connection with the admission into the Union of Kansas and Nebraska were unusually full of tragic interest. The subject appears to have aroused every feeling involved in party and sectional differences and attracted the active participation of the whole people. More blood was shed on account of this little territory than on account of any other single track of land ever acquired by the Union, except Texas. Of course, the primary cause of these difficulties was slavery; it has been reasonably claimed, however, that the United States Senate which has often exhibited something akin to indifference to the wishes of the people, was largely responsible for the Kansas strife. Early in 1853, Mr. Giddings reported a bill for the admission of these territories, which was passed by the House practically without debate.[1] This measure made no mention of slavery for the reason that the whole territory was situated north of the line 36 degrees and 30 minutes, which itself excluded slavery. The Senate, however, unwilling to have the states come into the Union without slavery, refused to act upon the House Bill and hung the matter up. Early in the Thirty-third Congress which assembled in 1854, Mr. Dixon of Tennessee, gave notice of his intention to introduce a bill repealing the 8th section of the Act admitting Missouri, referring to the prohibition of slavery north of the line 36 degrees and 36 minutes, whereupon Mr. Douglas moved to recommit the whole subject. The Douglas motion was agreed to and for the well known purpose of formally repealing the Missouri Compromise. In the meantime the anti-slavery forces were steadily increasing at both ends of

1. Giddings, p. 366.

the capitol. Sumner, who had just made his appearance in the Senate, joined with Giddings of the House and some half dozen others in a signed address to the people of the nation calling attention to what was being done in the direction of the abrogation of the Missouri line, and asking them to protest. And the people did protest, the people of the North, East and especially of the West. The legislature of several states adopted resolutions denouncing the United States Senate for its attitude on this question in the most vigorous and outspoken language while that body was pilloried by many of the northern newspapers. Three thousand and thirty clergymen of all denominations throughout New England sent to Congress their "Solemn protest against the perpetration of this national crime of extending slavery into territory once free by the voice of the nation.[2] But none of these things moved the Senate which could hear only the voice of its master—the slave power operating through the medium of the Democratic party. It had been determined and decreed that the Missouri line should be abolished by the adoption of the Douglas' Popular Sovereignty (better known as "Squatter Sovereignty") measure. Mr. Douglas doubtless thought he had made a clever move in this matter, but it turned out to be the most colossal mistake that ever happened in the career of that famous man, known the country over as the "Little Giant." When he moved to recommit the Dixon proposition just referred to, he moved to commit not only his own name to oblivion but that of the political party made famous by the names of men like Webster, Clay and his own. Mr. Douglas defended himself with characteristic cleverness against the charge of being responsible for all the odium attached to the doctrine of "Squatter Sovereignty."[3] It was well known, he said, that anything like the existence of a Missouri line had been for years ignored; in fact, had never been recognized; that the supposed settlement under the Missouri Compromise had settled nothing; that slave-holders traveled unchallenged and often resided unmolested with their slaves in the

2. Giddings, p. 367.
3. Constitutional and Party Questions, p. 88.

North and elsewhere, and most important of all, the slave power showed its contempt for this supposed settlement by exerting every possible effort to prevent the organization and settlement of the territories, and that he had simply attempted to counteract, if not to conciliate, the opposition by bringing forward his Popular Sovereignty scheme which he induced Congress to accept. There is no denying the truth of Mr. Douglas' claims. The fact that the Dred Scott case was not decided for more than a year after this time was not because of a lack of material for a similar contest years before but because it was well known that such a contest would have been a hopeless expenditure of energy and a wanton waste of money. Notwithstanding the fact that settlers were filling up the West, they could get no assistance from Congress, not even to the extent of being allowed to organize local governments. If Mr. Douglas, being a western man, could see no other way of getting the western territories organized except by yielding to the demands of the South, it was quite natural that he should seek a pretext, though it may be doubted whether he would have taken the responsibility of obliterating the Missouri line had he been able to foresee the bloody conflict impending. The scene of action and the storm center was now immediately transferred from Washington to Kansas. Under the Douglas plan the settlers were to elect whether or not they would permit slavery among them. But it seems to have been thought that the actual and bona fide settlers might not know how to decide properly; at all events the temptation to outside parties to determine this momentous question for the settlers seemed irresistible.

Frontier life was too harsh and uninviting to attract the easy-going southerner to the West as a permanent settler. But people were pouring into the West from the East and especially from New England, all of whom were bitterly opposed to slavery. Under the Popular Sovereignty scheme of Senator Douglas, it was certain that slavery would be excluded in the organization of the territory by an overwhelming vote should the question be referred to the bona fide settlers. But the slave power did not wish any such thing to

happen if it could be prevented by either fair or foul means. Hordes of poor whites and reckless adventurers were induced to cross over from Missouri into Kansas, terrorize and if necessary murder the bona fide settlers and to "squat" there long enough to vote slavery into the territory. These organized bands of "Border Ruffians," as they were called, at first had everything their own way as the settlers were unorganized and generally scattered, thereby becoming easy victims of the torch and dagger of these thugs. Nearly every settler within reach of the Missouri boundary had his crops destroyed, his barns and storehouses, and even his dwelling burned; and these savage raiders would be merrier still whenever they could add the life of an anti-slavery settler to the list of casualties.[4] Reports of these barbarities naturally aroused the people of the East whence these settlers had come. For the more speedy relief of the Kansas sufferers, an Immigrant Aid Society was formed in New England, the object and purpose of which was to encourage men to go to the assistance of the Kansas farmers in their struggles with the border raiders. Violent conflicts between the Missouri raiders and the Kansas homesteaders were of almost daily occurrence. It was in one of these battles that John Brown first distinguished himself as a militant Abolitionist. Brown had several sons who had established themselves in this disturbed section. These young men had accumulated considerable property, all of which had been taken away or destroyed by the raiders. Few of these farmers were supplied with fire-arms or other defensive weapons. Relatives and friends in the East undertook to ship weapons to these farmers, but such efforts failed owing to the fact that all such supplies and materials were intercepted and confiscated by the enemy on the Missouri border. After having made several futile attempts to equip his sons, John Brown packed several cases of arms, put them on the train as baggage and took them to Kansas himself. He made a careful distribution of his arms and calmly awaited the next invasion. He did not have to wait long, because the time was drawing near when delegates

4. Amer. Conf., Vol. I, p. 235; Garrison, Vol. III, p. 417.

were to be chosen who were to sit in the convention called to formulate a constitution for the state to be voted on later by the citizens, and it was important that the Missourians should keep actively at their work of terrifying and murdering these settlers from the East to keep them from controling the convention. Of course these raiders never desired or expected to be citizens of Kansas and only crossed the border from Missouri for the purpose of "squatting" or camping in Kansas long enough to saddle on the state a pro-slavery constitution to be proclaimed as the work of the actual settlers. It was this well-known purpose and attitude of the Missourians living along or near the border of Kansas that caused the Popular Sovereignty measure of Senator Douglas to become stigmatized as "Squatter Sovereignty" and to become damned to fame as such. These border ruffians, as they were aptly called, in pushing their campaign, soon encountered old John Brown and his men, at Osawatomie. Few of these Missourians ever got back to their homes; few ever reached the border. After this decided victory, Brown, having every reason to apprehend that the raiders might be reinforced by the whole State of Missouri and perhaps by Federal troops, slipped out of the state by way of Canada, after having made further reprisals on the Missourians by gathering up and carrying off with him some of their slaves. Brown, by using various aliases and disguises, finally got back to New England, where he at once began to make preparations for his famous raid at Harper's Ferry, then a town of Virginia, which he executed a few years later. To say that John Brown and his men caused the greatest excitement in Kansas is to put it mildly; they created a sensation throughout the nation. No peaceful farmer in Kansas ever dreaded or had cause to dread the appearance of a band of hostile Indians half so much as they did these Missouri raiders, who knew the language, the strength and weakness, the habits and connections of the settlers; they knew how, when and where to strike to accomplish the most harm and to bring on the greatest amount of distress. Nor did this annihilation of this band at Osawatomie by John Brown deter others from

coming over and taking forcible possession of the polls on the day of the election of delegates to the constitutional convention and seeing to it that only men were returned as elected who favored a pro-slavery constitution. These "squatters," supplemented by special troops of raiders, returned large numbers of votes from precincts where it was known that hardly a handful of votes had been cast and even from places where no polls had ever been opened. Delegates thus "elected" met and formed a so-called constitution, known as the Lecompton Constitution, which, of course, made ample provision for slavery. This was forthwith submitted to and was "ratified" by this same lawless element and had it reported as the work of "the people of Kansas." And this report had behind it the support of President Pierce and his administration as well as that of the entire Democratic press. Were it not for the actual tragedy involved, the whole thing might be passed over as a huge joke. And so it seems to have been regarded by the actual settlers who, in total disregard of the whole proceeding, called a convention of their own and formulated a constitution excluding slavery, which was ratified practically by a unanimous vote.[5] The contest was thus thrown back into Congress for a determination as to which instrument really emanted from the people of Kansas. The anti-slavery forces in Congress were sufficiently strong to resist with effect and in this contest they won after a protracted struggle.[6] The slave-holding interests are generally held responsible for the great loss of life and property incident to the Kansas-Nebraska troubles. Mr. Douglas, however, in speaking of the matter, in his "Constitutional and Party Questions," refers to the Immigrant Aid Societies of New England with great bitterness, and lays a large share of the responsibility at their door. It is admitted, however, that those who went to Kansas from the East did so with a bona fide intention of settling, while the forays from Missouri were known to have been gotten up for the sole purpose of terrorizing these settlers in the hope of forcing them to accept slavery.

5. Amer. Conflict I, p. 241.
6. Unable to come in without slavery, Kansas remained out of the Union until Feb. 19, 1861—Long's Hist. Rep. P rty, p. 53.

The Douglas measure was, as a whole, pro-slavery. "The three things," said he, "for which the bill was offered were: First, that all questions arising out of slavery should be settled by the people of the territories in which they were raised; second, that cases involving the title to slaves or personal freedom, should be appealed from local tribunals to the Supreme Court; third, that the fugitive slave law should apply to the territories." The remaining fragments of the Whig party in both Houses of Congress combined with the Democrats to pass the Douglas bill, the vote in the Senate having been 37 to 14 (March 3, 1854), and in the House 113 to 100 (May 24, 1854), while the Free Soilers were unanimous in their opposition.

At the opening of the Thirty-fourth Congress (1855), Mr. Henry M. Fuller, a representative from Pennsylvania, offered a resolution of the following tenor: "Resolved, that a useless and factious agitation of the slavery question either in or out of Congress is unwise, unjust to a portion of the American people and injurious to the country and should be discontinued," whereupon Mr. James Meacham, of Vermont, offered the following as a substitute, which was adopted 108 to 93: "Resolved, That in the opinion of the House, the repeal of the Missouri Compromise of 1820, prohibiting slavery north of the line of 36 degrees and 30 minutes, was an example of a useless and factious agitation of the slavery question, both in and out of Congress, which was unwise and unjust to a portion of the American people."

Charles Sumner had hardly been in the Senate a year when he took occasion to make one of his great speeches against slavery in connection with the Kansas discussion, and on account of some pointed references to South Carolina, Preston Brooks, a Representative from that state, committed a cowardly and brutal assault upon Mr. Sumner while he sat alone in the Senate Chamber. In consequence of this assault Mr. Sumner was absent from his seat for about four years. Thus slavery continued to show itself to be the most unfortunate of human institutions, as it undoubtedly tends to transform men into chattels and brutes on the one hand, and tyrants and brutes on the other.

CHAPTER IX

The Organization of the Republican Party—The Nomination of Fremont and Dayton—Exciting Campaign and Election of Buchanan—The Candidates, Platforms and Conventions of 1860—Dred Scott Decision—John Brown's Raid—Preparation for Rebellion in Anticipation of Lincoln's Election—Northern Newspapers Encourage South to Rebel—The Speakership Contest—Republicans Hedge—Jeff Davis Sets Forth Position of the South—Revival of Foreign Slave Trade Just Before War.

It took the Whig party just about ten years to die, beginning with the admission of Texas, in 1845, and ending with the Kansas troubles. The admission of Texas, the fugitive slave law of 1850, and the Lecompton Constitution, which was attempted to be forced upon Kansas, are the three signal incidents which contributed principally to the immediate organization of the Republican party. This party was formed by a combination of three distinct sets of men. First, there were those whose sentiments and utterances had been for years opposed to slavery, chief among whom were Sumner, Chase, Julian, Wilmot, Stevens and the veteran Giddings, who for twenty years before the organization of the Republican party, had led a forlorn hope in Congress against the forces of slavery; perhaps F. P. Blair and Preston King, both of whom, like Chase, had been Democrats, properly belong in this class; a second class coming almost exclusively from the Whigs, was composed of such men as Lincoln, Greeley and Seward, who were said to have been driven out of their party by the measure of 1850. The third and last element of great men to unite in the promotion of the Republican party, were the War Democrats, such as Gen. B. F. Butler, Generals McClellan, Logan and Sickles. Andrew Johnson also belongs in this class. The most of these men returned to the Democratic party at the close of the war or during reconstruction. These several elements entered the organization in the order named. The party adopted its name at a convention held at Jackson, Mich., July 6, 1854, and within one year after its organization it carried fifteen states and elected eleven Senators.[1]

1. "The Liberator" 25: 106.

For years the people of the non-slave holding states had been looking to the Whig party for protection of their interests against the aggressions of slavery, and for years they had been betrayed. It was known that the South was a political unit and that a large part of the North was in sympathy with them, while the rest of the northerners were indifferent. The Whig leaders, therefore, had always been willing to make terms with the South. Indeed, the Democrats and Whigs of the South had always been together on the slavery question while the two parties in the North were divided; the northern Democrats supported their southern brethren, while the northern Whigs had either to go along with the southern wing of the party or be left in a hopeless minority. Responsibility for the growth and spread of slavery rests largely with the North. So obsequious did northern politicians become that it was derisively said of them that whenever they wanted to make a political speech they would turn their faces southward; and on every proposition that came up, however vital it was to the interests of their constituents they seem to have felt that they had done their full duty when a compromise was affected though the main points might be sacrificed. When the South demanded Texas for the benefit of slavery through the Democratic party organization, and the rest of the country protested and protested with the most earnest vigor, the Whig party pretended to represent the anti-Texas sentiment and was so brazenly loud in such pretensions that the people put them in power through the election of Harrison and Tyler. But as soon as they got control of the government, without hesitation, shame or compunction, they brazenly betrayed their trust without even so much as a compromise on the Texas question. When the South demanded the unrestricted extension of slavery, and the rest of the country sought to unite and exert their opposition through the medium of the Whig party, they were given the Compromise Act of 1850, together with an odious and ill-fated fugitive slave law. When the South (always and ever working through its Democratic party) demanded the nullification of the Missouri line in order that slavery might be car-

ried into Kansas and Nebraska, and the rest of the country protested and sought to unite and direct their protest through the medium of the Whig party, that party gave them "Squatter Sovereignty." And so the country after many trials and betrayals repudiated the Whig party; and so the Republican party, like the fabled Greek god, was born full grown. Besides, the great Whig leaders like Webster and Clay were now dead. Had they survived, those of the North would have doubtless joined the new party and Webster would have known where to go for political shelter from the storm of disgust and indignation that was beating down upon the heads of the Whigs; for he would have seen that the people, thoroughly tired of evasion and equivocation, were now terribly in earnest against the extension of slavery, not so much because of any humanitarian interest in the Negro or his cause, but because they saw how slavery had blighted the South by robbing labor of its dignity and other rewards and knew that the same fate awaited the yeomanry of the North should the institution be allowed to pollute their atmosphere. They did not love the Negro or his cause so much but they hated slavery and its influence more.

Fremont and Dayton were nominated at Philadelphia on June 17, 1856, by men solemnly pledged to the restriction of slavery under the name of the Republican party and with the battle cry of "Free Soil, Free Speech, Freemen and Fremont," the new party entered upon a campaign never to be forgotten. Fremont and Dayton carried New York by a plurality of some eighty thousand, besides carrying all of New England, Ohio, Michigan, Wisconsin and Iowa, giving them in all one hundred and fourteen votes in the electoral college. The popular vote was as follows: Buchanan (Democrat), 1,838,169; Fremont (Republican), 1,341,264; Fillmore (Whig), 874,534.

The South clearly saw in the rise of the Republican party a determination on the part of the non-slave holding states to exercise all their reserved powers against the further encroachments of slavery and to do so without apologizing and with the consciousness of superior strength. All efforts to make peace were therefore discountenanced by the slave-

holders, who now began openly to encourage a widening of the breach between the two sections and to prepare for the consequences. While Congress itself practically marked time without making much history on the slavery question during the period immediately following the election of Buchanan, southern statesmen outside of Congress were busily preparing for rebellion. There also happened certain events like the Dred Scott Decision and the raid of John Brown that kept the anti-slavery forces keyed up to the highest tension.

The Democratic Convention, which met at Charleston in 1860 gave unmistakable evidence of the fact that the South intended to have either slavery extension or secession. On account of their inability to agree on a platform, the convention was forced to adjourn without nominating any candidates. There were two instruments presented, one by Mr. Avery representing a majority of both the platform committee and the assembled delegates, but a minority of the electors, and another reported by a minority of the committee but representing 179 of the 299 electoral votes. Finally a platform which confirmed the Dred Scott Decision, the Fugitive Slave Law, the Ostend Manifesto and Popular Sovereignty, was worked out and presented. The whole northern wing of the party agreed to swallow all of this, but the southern contingent rebelled. The southern delegates had been pledged to vote against Popular Sovereignty. The defeat of slavery in Kansas in spite of fraud and stuffed ballot boxes was sufficient to convince the slave power that this plank was too weak to sustain the ponderous weight of slavery. The plank in the Avery platform for which they contended was: "That the government of the territories organized by Congress is provisional and temporary, and that during its existence all citizens of the United States have an equal right to settle with their slave property in the territories without their rights, either of person or property, being destroyed or impaired by Congressional or territorial legislation." The southern delegates, having been pledged to stand for such a declaration in the Democratic platform, could accept nothing less. L. P. Walker, therefore, withdrew his Alabama delegation

from the convention which was followed by the withdrawal of all the southern delegates.[2] Butler, then avowing that he disagreed with both platforms as reported, withdrew his Massachusetts delegation; and so amid the wildest excitement, the convention broke up to meet at Baltimore June 18. Before the convention reassembled a majority of the seceders met and agreed upon the original Avery Platform; still when they came together at Baltimore, the wild scenes witnessed at Charleston were repeated and a large number of the delegates again withdrew, among them being those from Massachusetts, under the leadership of Butler, who left, declaring that he "would not sit in a convention where the African slave trade which had been made piracy by the laws of his country, was openly advocated.[3]

While the Democrats were shaking out of their party those who were unwilling to make slavery national, the Whig party, once so prosperous and so proud under the leadership of its Webster and Clay, met at Baltimore on May 19, under the name and style of Constitutional American party, and nominated Edward Everett, of Massachusetts, for President, and John Bell, of Tennessee, for Vice-President. Though Mr. Everett was an able and scholarly man, his party was at that time dead. Even the name "Whig" had dropped out of the lexicon of American politics except as that of a party that used to be.

It was an intrepid body that met at Chicago on May 16, 1860, composing the second national convention of the Republican party. Among other things for which this gathering was noted was the large number of men before that time unknown who flashed into lasting prominence from the hour of their appearance at that convention. A majority of these delegates were young men; and they neither sought to dodge any issue nor to compromise any principle, as had been the custom with their fathers, nor did they sugar-coat their words. With a hurrah they brought out a platform which emphati-

2. Amer. Conflict, I, p. 312; Stanwood, 1860.

3. Gaulden, of Georgia, in his speech before the convention, said that the slave trader was the true Union man and that the African slave catchers were the best missionaries. Amer. Conflict, I, p. 316.

cally declared against any extension of slavery and had such a determined ring on the whole as to make it about[4] as distasteful to the slave power as an out-and-out demand for immediate emancipation would have been. A limitless amount of campaign material was furnished the Republicans by the Dred Scott Decision, in which Judge Taney evidently aimed to strengthen the fugitive slave law of 1850 and to settle the Kansas question. It can hardly be denied that this decision was in accord with the Democratic party on those questions as well as the public sentiment that had prevailed before that time. The able jurist went too far when, speaking generally, he said that it was regarded as an axiom in law and morals that black men had no rights that white men were bound to respect. The judge was thought to have made an error equally grave when he asserted that black men could not be regarded as citizens because none exercised the privileges of citizenship. These errors would not have been so apparent had the laws of Massachusetts, for instance, and those of all the other states, been similar to those of Maryland, Mr. Taney's home state. In some of the states of the Union colored people have always had some protection under both the moral and civil law. Even under the revised constitutions which the slave power caused to be adopted by most of the states, the privilege of voting, some times regarded as the highest prerogative of citizenship, was never taken away by all the states. Even in Ohio, where many pretensions were made to conform to the mandate of the South so to revise the laws as to reduce the slaves and free colored people to as nearly the same plane as possible, all persons having as much as "seven-eighths" white blood could still vote. So Judge Taney was bitterly scored and the errors into which he had fallen were so apparent even to the dullest mind, that his effort to help the slave power had quite the reverse effect.

Another thing that contributed to the excitement of the time even more than the Dred Scott Decision, was the raid of John Brown at Harper's Ferry in 1859. This raid created a sensation throughout the whole country and served greatly

4. Stanwood, 1860.

to intensify feeling against the institution of slavery. Senator Mason, of Virginia, brought the matter to the attention of Congress by the introduction of a resolution demanding an investigation. This attempt on the part of John Brown to free the slaves by use of the arms which he had seized from the United States arsenal was thought to have been indefensible as well as untimely and unwise, and Mr. Mason thought that if it could be in any way connected with the Republican party and its supposed Abolitionist following, the fact would serve as a good weapon in the hands of the Democrats and conservatives in the pending campaign. The Republicans, however, blandly denied responsibility, and by an amendment to the measure offered by Senator Trumbull, of Illinois, demanding an investigation into the Missouri forays and the looting of the arsenals of that state for use against the settlers of Kansas, Mr. Mason and his party were put on the defensive and the current of the whole proceeding was changed. Mr. Trumbull's amendment was voted down, still it served its purpose in giving the Republicans a theme for discussion without touching the merits of the Harper's Ferry raid. In the discussion which took place in connection with these measures, much light was thrown on the Kansas troubles. While no one undertook to defend John Brown directly, many facts were adduced which tended to show that his rashness was not altogether devoid of extenuating features. It was shown that one of Brown's sons had been shot to death in cold blood in Kansas by one Martin, a preacher; and that another one of Brown's sons had been seized, tied to the tail of a horse and dragged until he had become a raving maniac, and that all their property had been destroyed on more than one occasion by raiders from Missouri. These things were aired in a manner that entirely diverted attention from the subject of Mr. Mason's resolutions, although some advantage was taken of the occasion to arraign the Abolitionists and the "Black Republicans." The report of Mr. Mason's committee, January 15, 1860, placed the responsibility for the Harper's Ferry raid upon the shoulders of John Brown and there the matter ended.

THE QUESTION BEFORE CONGRESS

The campaign of 1860 was one of suppressed excitement. The Fremont campaign, four years before, had effervesced with enthusiasm, open, boisterous, loud; but in 1860 everything seemed to be touched with a sense of responsibility quite sublime. The very air seemed laden with awful forebodings. The South assumed an air of stolid indifference as to the election of its candidates that made the Republicans dread their own success; for it was well known for a year previous to the election that Lincoln would be elected and that the South in that event would secede from the Union. Mr. Floyd, President Buchanan's Secretary of War, had been for two years shipping arms from arsenals in the North to southern arsenals.[5] Besides this, certain northern newspapers had been doing all in their power to encourage the South to rebel.[6] These journals declared that if the North should attempt to prosecute war against the South, there would be "a fire kindled in their (the North's) rear as well as in the front;" that northern capitalists had large sums invested in southern securities which, under no circumstances, would they see destroyed or impaired in the prosecution of a useless Abolitionist War. Besides, much of such encouraging talk of this kind on the part of northern men who, in the end turned against the South or maintained an unfriendly silence, the question as to the right of a state to secede from the Union had never been settled. The political school of Jefferson had always tended to exalt the state above the nation. New England was supposed to have claimed the right of secession in 1812; Calhoun boldly asserted it in 1832; some of the most famous Abolitionists of the East were preaching this very doctrine at this time, declaring that slavery was maintained in the South by reason of the protection afforded by the nation's arms.[7] In view of the foregoing facts and the alluring

5. Amer. Conflict, I, p. 408.

6. A Democratic mass-meeting, held in Philadelphia, January 16, 1861, just after Davis was elected President of the Confederacy resolved: "That if the South should separate from the Union, Pennsylvania's sympathy will be with our brethren of the South whose wrongs we feel as our own."—Long's Hist. Rep. Party, p. 53; ex-Governor Rodman P. Price, of New Jersey, in a letter to M. F. Maury, of Fredericksburg, Va., in the spring of '61, said that "New Jersey would go with the South from every wise, prudential and patriotic consideration."—Ibid., p. 57; for specimen editorials of the Albany (N.Y.) Argus, New York Herald and Boston Despatch, vide Amer. Conflict, pp. 355 and 396.

7. Vide Life of Garrison, also Austin's Wendell Phillips.

possibility of the establishment of a new confederacy to be received into the kingdom of nations, that might adhere to such practices as should be considered to be to its advantage, and whose commercial fleets, flying the "Stars and Bars" might forever plough the ocean between the free-trade ports of Charleston and Liverpool, the South had every temptation to secede in 1861. And so, as soon as the election of Lincoln was announced, Governor Gist, of South Carolina, recommended to the legislature of his state the necessity of taking the proper steps for withdrawal from the Union. The critical situation put the now dominant party on the defensive lest it should seem to be driving the South out of the Union. That the Republican party assumed this guarded attitude was clearly shown in the contest for Speaker of the House in 1860. Indeed, as late as March 2, 1861, both Houses adopted a resolution proposing a constitutional amendment denying to Congress the power to abolish slavery.[8] The Speakership contest afforded a splendid opportunity for a line-up of the members of the House. Support of Sherman, the Republican candidate, in the eyes of the South, meant hostility to slavery, while support of Bocock, of Virginia, meant the reverse. Secession was imminent and the Democrats were charging the Republicans with responsibility; they were charged with having a friendly interest in the slaves and with affiliation with the Abolitionists, all of which the Republican leaders denied. When John Sherman, the Republican candidate for Speaker, who was being arraigned by the Democrats on account of his supposed anti-slavery proclivities in general and particularly his alleged indorsement of a pamphlet then recently published[9] advocating the boycotting of the products of slave labor by the people of the North, arose and said: "Allow me to say once for all (I have said it five times on this floor) that I am opposed to any interference by the people of other states with the relation of master and slave in the slave states," there was applause in the Hall and in the galleries and not a word of protest.[10] Notwithstanding the

8. Long's Hist. Rep. Party, p. 67.
9. "The Impending Crisis," by Helper.
10. Cong. Globe, First Session Thirty-sixth Congress, p. 21.

fact that such sentiments were echoed and re-echoed about the Halls of Congress, the Republican party as a whole steadfastly adhered to its policy of slavery restriction. Soon after this contest was settled by the election of a compromise candidate as Speaker and the House was organized, Mr. Jefferson Davis introduced in the Senate February 2, 1860, a set of resolutions setting forth the contentions of the South as follows: "First, that in the adoption of the Federal Constitution the states acted severally and free, as independent sovereignties delegating a portion of their power to be exercised by the Federal Government for the increased security of each against dangers, domestic as well as foreign, and that any intermeddling by any one or more of the states, or by a combination of their citizens with the domestic institutions of the others on any pretext, whether political or religious, with a view to their disturbance or subversion is a violation of the Constitution; second, that Negro slavery as it exists in fifteen states of this Union composes an important portion of their domestic institutions * * * * and that no change of feeling on the part of non-slave holding states can justify them or their citizens in any systematic attack with a view to its overthrow; fourth, that neither Congress nor a territorial legislature, whether by direct legislation or legislation of an indirect or unfriendly nature, possesses power to impair the constitutional right of any citizen of the United States to take his slave property into the common territories, but it is the duty of the Federal Government to protect them; fifth, that the provisions of the Constitution for the rendition of fugitives from service or labor, without the adoption of which the Union could not have been formed, and the laws of 1793 and 1850 are similar which were enacted to secure its execution, bear the impress of seventy years' sanction of the highest judicial authority * * * * and the acts of state legislatures to defeat it, are hostile in character * * * * and will lead the injured states by such breach of the compact to exercise their judgment as to the proper mode of redress."

It would be hard to find a set of resolutions more expressive of the principles of any party than these, or in truth, a

more explicit statement of any case. They defend slavery and the slave laws, uphold the doctrine of State Rights, spurn Squatter Sovereignty and broadly hint at secession. These were the cardinal principles for which the South contended and stubbornly struggled to the last. Senator Clark, of New Hampshire, addressing himself to these resolutions on February 20, 1860, earnestly defended the powers of Congress to legislate with regard to the territories and to slavery. He declared that the greed of the Democracy had brought forth the Republican party which stigmatized slavery as "a relic of barbarism" which it intended to confine to its present limits where it shall become unprofitable and be smothered out. "To prevent the extension of slavery in the territories," said he, "is the cardinal object of the Republican party, but in saying this I deny that it attempts or seeks to attempt by any action of the general government, to interfere with it in the states where it exists, but they will hold it up and discuss it as a moral, social and political evil." At this time Senator Andrew Johnson was addressing the Senate on Mr. Mason's Harper's Ferry resolutions. Replying to Senator Trumbull, who had taken as the text of his speech the resolution in the Republican platform: "That with our Republican fathers, we hold that all men are born free and equal, and that it is the primary object and ulterior design of the government to grant these," etc., Senator Johnson asked: "Is there a man throughout the length and breadth of this Republic who believes for one instant that when Jefferson penned these lines he had in mind the Negro population." Illinois, Senator Trumbull's state, had at this time a constitution acknowledging the equality and liberty of all, still it was well known that colored people were proscribed and discriminated against in the administration of the laws. Mr. Johnson called attention to this fact and scored against Mr. Trumbull, who was compelled to acknowledge that he favored deportation of the freedmen. There was one man in the Senate, however, who could never be budged from his position, and that was Senator Sumner. While Senators Johnson and Trumbull were battling, with the latter on the defensive, Mr. Sumner was preparing one of

his sweeping speeches which he delivered a few days later in which he held up not only slavery but slave-holders as well to the execration of mankind, declaring that "slave-holders are base, false and heedless of justice; that there is no vileness of dishonesty, no denial of human rights, that is not plainly involved in the support of an institution which begins by changing man, created in the image of God, into a chattel and sweeps little children away to the auction block." Thaddeus Stevens, the leader of the Republican forces in the House, in a speech in defense of the powers of the government to regulate slavery in the territories, etc., delivered about this time, summed up the situation as follows: "The right of abolition is a question of expediency about which Republicans differ, but whenever it can be done safely and justly, it is the intention of the Republican party to do it." Such remarks by intrepid leaders like Sumner and Stevens gave little assurance to the South that the slavery question would be adjusted to the satisfaction of the slave power.

It having come to the knowledge of Congress that New Mexico, where slavery had been prohibited by Congress, had passed numerous slave laws, Mr. John A. Bingham, on February 16, introduced in the House a bill disapproving and declaring void all laws and acts or parts thereof passed by the Legislature of New Mexico in any manner countenancing slavery in that territory. The passage of this measure, May 10, 1860, by a vote of 97 to 90, shows the strength of the Republicans in the House at that time. The situation in the Senate, however, was far different; that body adopted the Davis resolutions before referred to, one by one, without an amendment though every Republican voted in the negative.

There appears to have been a brisk revival of the African slave trade just prior to 1860.[11] At all events it was deemed necessary to pass a law in May of that year amending the Act of March 3, 1819, prohibiting the slave trade and giving the President specific power and authority to arrange with competent parties for the return to Africa of such slaves as might

11. In Gaulding's speech before the Baltimore Convention before referred to, he spoke of their being in the South "Africans, fresh from Africa," and described them as "the noblest Romans of them all."

be seized on ships engaged in the trade. It was officially reported that a thousand Negroes were brought from Africa to the coast of Florida in 1860[12] and it was this incident that inspired the introduction of the above-mentioned measure for the enforcement of which Congress appropriated two and one-half million dollars.[13] This was among the last Acts passed at this session of Congress which soon afterward adjourned when its members returned home with hearts beating fast with anticipation while the clouds were gathering thick and dark in all our sky and fate was forging bolts of thunder.

12. Vide Special message of President Buchanan, May 21, 1860
13. Globe First Session Thirty-sixth Congress, p. 2640.

CHAPTER X

The First Republican House of Representatives—Members Confused and Excited—Lincoln Assumes Reins—His Inaugural Address —Opposed to Interference with Slavery—Sketch of Lincoln's Public Career up to the Time of His Election—Not an Abolitionist—Secession and Beginning of the Civil War.

In 1860 the Republicans elected all their candidates because the opponents of slavery had at last found an organization through which they could effectively act and because the slave power being as thoroughly tired of compromises and as much disgusted with make-shifts as anybody else, did not care. Indeed, the South, instead of opposing the candidates of the Republican party, deemed that the time and energy could be more profitably spent in making final preparation for leaving the Union. The slavery question, however, was about the only issue before the people at this election. Well-defined, clear-cut and stripped of qualifications, the question was: Shall slave-holders be permitted to carry their institution of slavery into territory where the laws of the nation had expressly prohibited it. The time for abstract lectures and learned dissertations by the select few had past. The issue had been reduced to its lowest terms and simplest form where a catagorical answer had to be given by the common people. And on this issue the Republicans were given a majority in both Houses of Congress and put in control of the government, but the possession of this power at first had the effect of frightening rather than elating them. And when we consider the responsibility thus suddenly thrust upon a lot of men, a large majority of whom were new and inexperienced in matters of legislation and who were immediately called upon to face the gravest legislative problems of their age, it can be readily understood how fearfully confused they were and how much confused they were in their fear. But this congressional confusion was only a reflection of the general confusion and turmoil throughout the country, for everybody

felt and knew that a great crisis impended. Public spirit was at fever heat and those who had not been entrusted with authority as individuals or as organizations, assumed to advise the constituted authorities. Foremost among this latter class might be mentioned the Peace Convention, hastily called together by pacifists to consider ways and means of preventing civil war. This conclave was attended by delegates from twenty-one states, who formulated their whereases and resolves in the usual manner, to the usual extent and with the usual result of accomplishing nothing else. On the other hand, there were innumerable propositions presented before Congress. There were proposals to amend the Constitution so as to provide for an indelible Missouri line of 36 degrees and 30 minutes; resolutions to the effect that Congress had power to legislate on the slavery question in regard to the territories and resolutions declaring that there was no such power; in short, there was a regular jumble or hotch-potch of resolutions. There was even a formal proposition demanding that the Federal Government should recognize and protect slavery in all the territories and in the states where it then existed. All of these matters were referred in the Senate to a special committee of thirteen and in the House to a similar committee of thirty-three. To these committees was also referred the report of the Peace Convention just mentioned. After much labor on the part of these committees a proposition was favorably reported which, among other things, provided as follows: That the Constitution should be amended so as to provide for the perpetuation of slavery south of the Missouri line; that no territory should be acquired without the concurrence of a majority of the Senators from the slave and free states; that Congress should be denied the power to legislate on the question of slavery; that the Federal Government should pay for all slaves that might escape into states whose citizens might refuse to assist in apprehending and returning such fugitives. Although the Republicans were in complete control of legislation, the Senators and Representatives from the South had not as yet resigned their seats, though their participation in these debates

was with a stolid indifference as to the result. The South had plainly gone too far in the direction of secession to recede; still it was desired that it should seem that they were being driven out of the Union. In the meantime the House Committee of thirty-three reported another bill providing that any amendment looking to the abolition of slavery emanating from a slave state should require for its adoption the consent of every state in the Union. This bill did not pass, nor did the other one first mentioned, but it did give additional impetus to the secession movement. Matters outside of Congress were in a worse shape, if such a thing were possible, than they were in Congress. Foreign capital, fearful and sensitive as capital always is, was being withdrawn, indicating a lack of confidence abroad, while domestic business was paralyzed. Merchants and traders in the North were divided; some of them looked upon Lincoln much as the mob of respectable citizens had done in the case of Garrison, in 1833, as the cause of the dull markets and general stagnation of business, while other merchants and practically all of the common people charged the trouble to the rapacity of slavery. The South, in the meantime, had fully determined to test its right to leave the Union. Matters stood thus when Mr. Lincoln and his Cabinet assumed the reins of government, March 4, 1861. In his inaugural address Mr. Lincoln labored hard to reassure the South by the frankest disavowal of any intention to disturb them in the enjoyment of their institutions as they then were, but to no purpose. The die had been cast and within a few days Beauregard was destined to fire on Sumter and "The Star of the West" was to be put about off Sullivan's Island as she steamed down the bay with supplies from New York. Political affairs at once became more mixed and the character of the adherents to the government became more complex. To the slavery restrictionists, straight-out Abolitionists and the usual drift of motley mugwumps were now added many rank pro-slavery War Democrats. The Abolitionists formed the weaknest element of this heterogeneous aggregation, and if this fact is kept in mind, together with the fact that Mr. Lincoln himself was

not an Abolitionist, the policy of the government and the conduct of affairs during the early stages of the war will be more readily understood. It will be remembered, too, that Mr. Lincoln was born in a slave state (Kentucky) and was reared in a border state (Illinois) and knew much of the character and temper of slave-holders. Besides having had the opportunity to observe the situation at close range, Mr. Lincoln had been called upon more than once to consider the particular question of slavery. In 1849 (January 10) when he was a member of the House, and outside influences were being brought to bear with unusual strength upon Congress for the abolition of slavery in the District of Columbia, Mr. Lincoln introduced a bill for the enactment of a fugitive slave law to be applied to the District.[1] At Charleston, Ill., on September 8, 1858, during his struggle with Judge Douglas for a seat in the United States Senate, Mr. Lincoln stated his position in reply to direct questions as follows: "I am not nor never have been in favor of bringing about, in any way, the social and political equality of the white and black races. I am not nor never have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office; * * * there are physical differences between the white and black races which I believe will forbid the races living together on terms of social and political equality, and which, inasmuch as they can not so live, while they do remain together, I am in favor of having the superior position assigned to the white race."[2] That Mr. Lincoln's opinion on these questions had not materially changed in 1861, the following extract from his first inaugural address will tend to show. On making his bow before the nation on that occasion the President said: "There is no foundation in reason or cause for apprehension. Indeed, the most ample evidence to the contrary has all the while existed and has been open to inspection. It is found in nearly all of the public speeches by him who now addresses you. I do but quote from one of these speeches when I declare that I have no purpose directly or indirectly to interfere with the institution of

1. Cf. Whitney's "Life on the Circuit With Lincoln," p. 362.
2. Whitney, p. 358; Richardson's Executive Documents, 1861.

slavery in the states where it exists. I believe I have no power to do so; I have no inclination to do so. Those who nominated and elected me did so with the full knowledge that I have made this and many similar declarations and have never recanted them. More than this, they placed in the platform for my acceptance and as a law unto themselves and to me, the clear and emphatic resolution which I now read: 'Resolved that the maintenance inviolate of the rights of the states and especially of each state, to order and control its own domestic institutions according to its own judgment exclusively, is essential to the balance of power on which the perfection and endurance of our political fabric depend, and we denounce the lawless invasion by armed forces of the soil in any state no matter on what pretext, as among the grossest crimes.' Now I reiterate these sentiments, and in doing so I only press upon the public attention the most conclusive evidence of which the case is susceptible, that the property, peace and security of no section are to be endangered by the incoming administration."

That Mr. Lincoln was an anti-slavery man no one has any reason to doubt; that he was an Abolitionist, no one has any reason to believe; that he was a slavery restrictionist, every one knows. His whole life is filled with incidents tending to show that he had no sympathy with slave-holding. Indeed, the very fact that he came or was brought at an early age from the slave state of Kentucky to the free state of Illinois would tend to show that his aversion to slavery was deliberate; but this by no means meant that he was an Abolitionist, which meant to be of that stripe of an anti-slavery man who disapproved of slavery not only on moral and political grounds but whose opposition to the institution was active, bitter and uncompromising and who not only hated slave-holding but despised slave-holders and held them up to the execration of mankind. With this school of anti-slavery men Mr. Lincoln neither had nor claimed any relation. Nor did he repudiate them in terms half so severe as they used in their repudiation of him, if the opinion of men like Wendell Phillips and William Lloyd Garrison may be taken as a fair index

to the general opinion of their associates.[3] Perhaps no man in history has been more misunderstood by succeeding generations than Mr. Lincoln has been in regard to his attitude on the question of Negro slavery in the United States. Between flatterers, who have deliberately sought to suppress the facts on the one hand, and cunning enemies, who have deliberately sought to distort the facts on the other hand in order to damn his memory by making it appear that he was a time-serving hypocrite, the student unacquainted with the whole history of the period, is likely to be left in great confusion. There is no more comparison to be made between the abolitionism of John Brown and Abraham Lincoln than between the religion of Bob Ingersoll and Savonarolla. Nor is this any necessary discredit to either the head or the heart of Mr. Lincoln, certainly not to his head for the reason that had he been an Abolitionist, or even been suspected of being one, he never would have been President of these United States and consequently never would have had the opportunity of signing the Emancipation Proclamation which he was virtually forced to do under circumstances over which he himself acknowledged he had no control. And had he issued this famous proclamation at an earlier time or under different circumstances, he would have failed as miserably as did John Brown at Harper's Ferry. Slave-holders had to be maddened like unto those whom the "gods would destroy;" they had to be smitten with blindness so that they could not see what Mr. Lincoln tried so hard to show them, while the rest of the country had to be taught that the salvation of the Union was of greater consequence than their prejudice against Negroes or their utter indifference to the fate of the slaves and the nation had to learn the deeper significance of the earnestness of the southern people in their endeavors to establish a separate government with the encouragement of some foreign countries, especially England. The question of freeing the slaves naturally became involved during the progress of the war just as any other matter as to how the enemy might be more effectively harrassed by the destruction of his property

3. Austin's Life of Phillips, p. 233; also Life of Garrison.

or commerce. The slaves were not only property but property of the most valuable and useful type in the hands of the enemy. They could not only raise and protect supplies but were the actual source of supplies that maintained the opponents of the Union army. And however much Mr. Lincoln might have regretted having to involve the slaves, especially in view of his promise and the promise of his party to maintain the Union and administer the government without disturbing slavery, he could no more avoid the necessity of freeing the slaves than he could the blockading of southern ports. His duty as the Commander-in-Chief of the Federal army compelled him to take any step calculated to weaken the enemy. Indeed he would have received the condemnation of mankind and the execration of history had he failed in this paramount duty to the nation at this crisis when the fortunes and the lives of so many of its citizens were being exposed for its salvation from the threatened dissolution. There is no form of cruelty, barbarity and heedless destruction of all that is held sacred by man that is not involved in war; nor is there any greater evil with the possible exception of slavery which always begins, continues and has its being in warfare and has, therefore, been aptly described as the sum of all evils. Slavery always begins in war and usually ends as it begins. The province of a general is to conquer by destroying the enemy and his property and it matters little whether the property destroyed is a ship at sea freighted with corn intended to feed the enemy's soldiers or slaves in the field hoeing cotton intended to clothe them. Mr. Lincoln did not start out with any deliberate purpose of freeing the slaves and in this regard he deserves neither the unsparing condemnation of the South nor the extravagant plaudits of anybody else. Fate joined the good of the slaves with the good of the country in a "union, one and inseparable" and Mr. Lincoln was given a great opportunity which he used like a great man and a great statesman.

CHAPTER XI

The Early Conduct of the War—Union Army Busy Catching Fugitive Slaves—General Butler's Early Start and Repentance—Lincoln's Administration Opposed to Freeing Slaves—General Fremont Relieved of His Command Because of His Attempt to Free Slaves—General Hunter in South Carolina—The Administration Begins to Recede—Opposition to Negro Soldiers—The Draft Riots—Heroic Treatment for Rebellion—The Beginning of Abolition—The Confiscation Act—Lincoln Offers Payment for Emancipated Slaves in the District of Columbia—Efforts to Evade Emancipation Law in District of Columbia—Clamor for General Emancipation Act—Greeley's Famous Letter to Lincoln and Lincoln's Reply—The Preliminary Emancipation Proclamation.

Although the war was prosecuted in earnest from the beginning by the South, the Federal Government for several months affected to regard the matter as being of slight importance. The enthusiastic vigor of the Confederate soldiers resulted in victory after victory for their arms until the very capitol of the nation was about to fall into their hands before the Washington Government came to realize that the contest was war and the Union soldiers began to appreciate the fact that military glory was involved in success on their part. Indeed, during the first eighteen months of the war the Federal army seems to have devoted more time to the apprehension and return of fugitive slaves than to any serious contention with the enemy. Conscious of having wronged the slaves and feeling, doubtless, some weak fear of retribution, the slaveholders and their sympathizers entertained grave fears of a servile uprising. They remembered poor old Nat Turner and how he foolishly moved against the whole nation, although the nation according to his knowledge and conception consisted only of the oppressors by whom he was surrounded on the Virginia farm where he lived, almost single-handed in his effort, in his vain hope, nay, in his madness, to free his people. They remembered Denmark Vesey who did practically the same thing in South Carolina. That these two efforts at a

servile insurrection had proved to be mere madness, in view of the ample and ready arms in hand or at the immediate disposal of the master class, did not prove, now that these masters were absent with their arms, that the slaves even without any organization or leader, might not rise up and smite the women and children of their masters. Pictures of Toussaint L'Ouverture and San Domingo, too, naturally arose vividly before the eyes of southern white men at this time. But to the surprise of all, to the astonishment of the world and to their own everlasting credit the Negroes to a man proved themselves to be far too noble even to hint at taking advantage of these women and children. And during these trying days many a strong slave man slept at the bed chamber door of his mistress in order to allay her fears. Some savage natures, not being able to understand this true nobility might be inclined to ascribe this sort of behavior on the part of the slaves to cowardice, but no one who knows anything about Fort Wagner, Fort Pillow, Fisher's Hill and a hundred other battlefields made memorable by the valor of Negro soldiers during this same war, would dare call Negroes cowardly. So far as the slaves were concerned at this crisis, they left retribution where it belonged and vengeance to the Lord. He repaid. General Butler, however, on his way South, felt called upon to assure the Governor of Maryland that he, with his troops, "would put down anything like an insurrection on the part of the slaves in that state," and that "any call by the Governor for such purpose would be promptly complied with by the men of Massachusetts."[1] General Butler's warm enthusiasm in that direction, however, was destined to be short lived, for he not only experienced a change of heart by the time he reached Fortress Monroe, but discovered that he had mistaken the temper both of the southern people and of the people of Massachusetts as well. Governor Andrews, of Massachusetts, took the General sharply to task for his indiscretion; but Butler set himself right with the whole North when a short while later he rebuffed Colonel Mallory who wished to enter the Union lines in search of escaped slaves.

1. Giddings, p. 464.

by coolly informing him that any Negroes coming inside the Union lines would be held as contraband of war. And by the time General Butler reached New Orleans he found it necessary to incline about as far in the other direction in order to maintain himself. The women of New Orleans are said to have been so enraged on account of the presence of Federal troops that they not only railed at them most violently but even went so far as to spit upon them. At all events the situation became so uncomfortable for Butler and his men that the General gave orders permitting his men to treat any woman as lude who might insult them.[2] General Butler later became one of the most zealous supporters of Negro soldiery and Negro citizenship. While Butler's eagerness to offer the Governor of Maryland the services of his troops, etc., may have displeased Governor Andrews, it did not displease the Washington administration, which at the time was making every effort to dissuade the South from a continuance of the war as well as to demonstrate to the world that the government was giving no just cause for the rebellion. And for fear that it might be thought abroad that the war was being prosecuted for the purpose of depriving the South of its slaves, United States Ministers at foreign Courts were instructed to deny that such was the intention. Even as late as April 22, 1863, Mr. Seward, Secretary of State, deemed it wise and politic to give instructions to Mr. Dayton, our Minister to France, to the effect "that the condition of slavery in the several states will remain just the same whether it (the rebellion) succeeded or failed * * * * The right of the states and the condition of every human being in them will remain subject to the same laws and forms of administration."[3] He even went so far as to declare that "Republicanism ought to disappear before questions touching the Union."

General McClellan, who was in command of the Union army in Ohio and the western part of Virginia, announced himself as being ready "to crush anything" in the nature of a servile insurrection in his territory.

2. Giddings, p. 467.
3. Amer. Conflict II, p. 237; Giddings, p. 465.

Unlike Generals Butler and McClellan, General Fremont, who was in charge of the Union forces in Missouri at the beginning of the war, undertook to liberate the slaves of the rebels in his territory by proclamation from his camp. Mr. Lincoln promptly disapproved of General Fremont's action and ordered him to withdraw his order, and being unable to get him into line with the administration policy on the question, General Fremont was relieved of his command.[4] In his letter to General Fremont, touching the matter, the President stated that such action on the part of army officers was not only unwarranted but against the spirit of an Act of Congress relative to the conduct of the war.[5] Colonel D. R. Anthony was relieved of his command by the President for what would seem to have been a much less grave offence. Colonel Anthony had been so much annoyed by slave hunters prowling about his camp in search of fugitives that he issued an order forbidding slave-holders or their agents to enter within the lines of his camp for the purpose of hunting slaves. This order cost Colonel Anthony his commission.

The President was bitterly opposed to fighting the rebellion through any interference with slavery and did all he could to dissuade both the members of his Cabinet and the officers of the Union army from such a course.[6] When Halleck, who succeeded Fremont, issued his famous Order No. 3 forbidding Negroes to enter the lines of his command because they "would carry important information to the enemy" he evidently pleased the President, as did also Marshall Dent, when he ordered his men at Louisville, Ky., to catch and flog any colored person caught within the lines of their camp after dark. Sundry captures of this sort are said to have furnished rare sport to the soldiers under Dent while innocent colored persons were being taught to eschew the Union camp.

When General David Hunter arrived at Hilton Head, S. C., he found that a large number of colored people, whose former owners had fled on his approach, had gathered there from

4. Amer. Conflict II, pp. 585, 593.
5. Ibid, 238.
6. Brackett's Life of Lincoln, p. 300; also Whitney, p. 360.

various sections of South Carolina and Georgia. He not only told these people that they were free but put them to work and began to make soldiers of such as were fit. News of this having reached Mr. Lincoln, he promptly issued a manifesto by which he hoped to put a certain and speedy end to attempts at emancipation by army officers. The tide of public sentiment in the direction of emancipation, however, was too strong for Mr. Lincoln to stem; he had to yield or lose control of the whole situation. Even before the action of Hunter at Hilton Head, a general order had been issued (October 14, 1861) permitting the employment of fugitive slaves as laborers, etc., "coupled with the understanding and public purpose that the master should be paid for the services of such slaves who should become thus employed," and it was also "especially provided that this shall not be taken to mean any general employment of Negroes in the military service." The Confederacy, however, had not hesitated about employing Negroes in its army; and it was doubtless this fact that caused the Lincoln administration to issue the general order referred to. In order to check the South in its employment of Negro soldiers, Congress passed an Act on August 6th, 1861, which provided that all colored persons attached to the Confederate army who might be captured should be declared free. No one paid any attention to this act, however, as during this time neither any Confederates nor any of their attaches were captured. Mr. Cameron, Mr. Lincoln's Secretary of War, recommended an attack upon the Confederacy through the use of the slaves or by declaring the slaves free in the early part of 1861, but the President spurned the suggestion and struck it out of Mr. Cameron's report.[7] The problem was a puzzling one for the Lincoln administration which was trying "to run with the hare and hold with the hounds." Mr. Lincoln's Congress had passed laws intended to prevent the slaves from joining their masters in the

7. Amer. Conflict II, p. 242. Large gangs of slaves were put to work on Confederate redoubts three months before the attack upon Fort Sumter. Free Negroes were employed at Charleston, Lynchburg, Memphis and Norfolk in a like capacity in 1861. A regiment of 1400 Negroes having been organized, was reviewed by the Governor of Louisiana about this period and in 1861 (June) Tennessee passed an Act for drafting Negroes into service of the Confederacy. (See Long's Hist. Rep. Party, p. 69.)

field, which he plainly had no power to enforce, and in addition to this, he had ordered his generals and commanders to throw every possible obstacle in the way of slaves escaping from the South. In order to refute the charge that it was "an Abolitionist war, prosecuted and sustained by the Black Republicans," the Lincoln administration made every effort to teach the colored people that they could hope for no benefit from the success of the Union arms; and it was for this reason that Mr. Lincoln opposed the employment of Negroes in the Union service in any capacity, though colored men had been employed in all other wars in which the country ever engaged. His cabinet was a unit for the employment of Negroes as soldiers as early as July, 1862, but the President forbade it,[9] and positively refused to countenance such a move until the 20th of January, 1863. Mr. Lincoln's opposition to the employment of colored men as soldiers was based upon two grounds: First, he pretended to have had no faith in their valour notwithstanding their previous record as soldiers in the wars with England and Mexico. There is room for some doubt as to Mr. Lincoln's sincerity in standing on this point; in view of the fact that he had widely published his intention to support slavery and his consistent action in this regard up to that time, one feeling the condemning responsibility for such a state of affairs might well doubt whether the Negroes could be safely trusted to support the Union; and Mr. Lincoln had good reason for asking, "What assurance have we that they will fight on our side?" "Giving them (Negroes) arms," continued he, "would be equivalent to putting them at the disposal of the enemy and we have no more arms than we need for our white soldiers."[10] A second reason for his hesitancy about employing colored troops was more particularly well founded. It was on the ground of the rank prejudice on the part of the Union soldiers against fighting with "niggers" as comrades. There is little doubt, but that the Union soldiers

8. Whitney, p. 362.

9. Ibid, 362.

10. See report of interview with delegation of Chicago ministers, August, 1862, Amer. Conflict, II.

would have been deeply offended had colored soldiers been introduced into their ranks while under the delusion that they themselves were abundantly able to "wipe out the Johnnie Rebs in a jiffy." At that period the northern yeomanry was very eager to go to the front; and when the President issued his second call for volunteers, about double the required number responded joyfully: "We are coming Father Abraham, six hundred thousand strong." But after these braves had met the southerners in battle a few times and had tasted the hospitality of an Andersonville or Libby prison, they were much less anxious to die for their country; and when their terms of enlistment expired, states had to resort to draft laws in order to fill their quota of troops. The engagement of colored men as soldiers now became a matter of serious consideration on the part of the government and the question of freeing the slaves became subordinate to that of filling the depleted ranks of soldiers in the Union army.

The necessity for drafting men was more or less humiliating to the Washington Government; besides encouraging the South, it tended to publish to the world the fact that it was taxing the Union to its uttermost to cope with the rebellion. Then, too, the situation was facilitating the way for the open reception of the Southern Confederacy into the kingdom of nations. The dampened patriotism of northern men of the soldier class was further reflected in the anti-draft riots that took place in many northern cities, especially New York, where the colored people, upon whom the vulgar looked as the cause of the war, were ferociously assaulted, their dwellings demolished and the inmates in many cases, murdered. So fierce was the outbreak, that no colored person dared to show himself on the streets of New York City for several days. This outside pressure was soon reflected in Congress, which body now gave evidence of a sharp advance on the policy of the Lincoln administration. Up to this time the Union army had achieved no victory other than such as the apprehension and return of fugitive slaves. In its vain endeavor to maintain slavery the government was

frittering away its resources at the rate of millions a day, and the feeling of disgust on the part of those supporting the Union cause was rapidly giving way to a feeling of desperation.

In the spring of 1862 (April 14th) Senator Wilson offered a resolution directing the Committee on Military Affairs to report "whether or not further legislation was necessary in order to prevent persons employed in the military service of the United States from aiding in the return of persons claimed as fugitive slaves, and to punish them therefor." When this came up for consideration, Senator Grimes had it amended so as to have the committee to report at the same time "what reorganization as to the personnel of the army or otherwise, was necessary to promote the public welfare and to bring the rebellion to a speedy close."

This was the beginning of the heroic treatment to which the rebellion was afterwards subjected. There was a general shaking up among the commanders in the army all along the line. Slave hunting about the Union camps ceased and men like General Halleck, who could see the danger of important news being carried to the enemy from the Union camps by Negroes, but could not conceive of how the same could be done by rebels themselves who were given free ingress and egress when they claimed to be hunting slaves, were either reduced in rank or sharply reined up. General Halleck's Order No. 3, forbidding Negroes to enter within the Union lines, became quite famous as it seemed to have embodied most fully the timid and spineless policy that characterized the Lincoln administration of affairs during the first eighteen months of the war. This order of Halleck was brought to the attention of Congress by Senator Sumner as early as December 4th, 1861, but it was not repealed until July 17th, 1862, when this and all similar regulations were set aside and their further promulgation prohibited. In the meantime, propositions, memorials and petitions for measures to put a speedy end to hostilities were poured in an endless stream upon Congress, and of all the clamor, the loudest and most persistent note demanded the

emancipation of the slaves. And so, on December 5th, 1861, Senator Trumbull introduced a bill providing for the abolition of slavery, which was referred to the Judiciary Committee together with a number of other propositions of a like nature. The committee finally reported a bill embodying the emancipation idea. This was known as the Confiscation Bill. After it had been debated in the Senate for several weeks, it was referred, May 7th, 1862, to a Special Committee ostensibly for further consideration but in reality to gain time for a further test of public opinion before final steps were taken on the measure. The public clamorously approved of the step as being one in the right direction. The House had also placed a similar measure into the hands of a special committee of that body which promptly reported the measure subsequently adopted by both Houses. After providing for the confiscation of rebel property generally, it provided, Section 9, that "All slaves of persons who shall hereafter be engaged in rebellion against the Government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them, or coming into the control of the Government of the United States, and all slaves of persons found or being within any place occupied by rebel forces and afterwards captured by the forces of the United States, shall be deemed captures of war and shall be forever free from servitude and not again held as slaves." Section 10 provided for the prohibition of "the capture and return of fugitive slaves coming within the Union lines by army officers." Section 11 authorized the President "to employ colored men in the army in any way he deemed best for the suppression of the rebellion." Section 12 authorized the President "to provide for the deportation and colonization of such freedmen as should consent to leave the country." This act which was approved by the President on July 17th, 1862, was the first radical step taken by the Government in its effort to suppress the rebellion. This radicalism in Congress, however, was but a faint reflection of

the general discontent on the outside on account of the conduct of the war. The press became violent in its strictures upon both President and Congress; army officers were openly charged with cowardice or inefficiency; confidence in the government's power to suppress the rebellion from the first affected to have been lacking abroad, began to wane at home; those of the soldier class who were at first inclined to regard "the wiping out of the Johnnies" as a picnic, were now either silent and down-in-the-mouth or bitterly charging their disappointment to the malfeasance or misfeasance of those in command of the Federal troops. In the meantime, the people of the South were using with telling effect the anti-Negro riots in the North and the harsh treatment to which Negroes had been subjected by the Union soldiers in their endeavors to prove to the slaves that their masters were their best friends and that success of the Federal arms held no hope for them. Then, too, there was beginning to be talk of withholding supplies for the army[11] by many who had been the most enthusiastic supporters of the Union cause, unless Mr. Lincoln and his associates should become more aggressive in the prosecution of the war. Thus pressed on all sides, Mr. Lincoln transmitted to Congress, March 6, 1862, a special message[12] in which he recommended the adoption of the following: "Resolved, That the United States ought to co-operate with any state which may adopt a plan for the general abolition of slavery, giving such state pecuniary aid to be used by it in its discretion to compensate the inconvenience, public and private, produced by such change of system." In the special message just referred to, the President plainly intimated that neither he nor Congress had any power to interfere with slavery where it then existed; and in discussing the effect of the resolution he desired Congress to pass he said: "It is proposed as a matter of perfect freedom with them" (meaning the slave states). Congress promptly adopted the resolution as above set forth and the President approved it April 10th, 1862. The South,

11. Whitney, p. 362.
12. Richardson's Ex. Doc., 1862.

however, had been too much encouraged by its numerous victories on the battle field and the growing coolness on the part of northern supporters of the Lincoln administration to pay any attention whatever to such overtures.

Mr. Lincoln had a most profound belief in the impossibility of the white and colored races living together on terms of civil and political equality; and it was this fact more than anything else, perhaps, that made him hesitate about using his power to forward the cause of emancipation, especially if the idea of emancipation was uncoupled with that of deportation.

On December 16th, 1861, Senator Wilson introduced the bill by which slavery in the District of Columbia was abolished; when this came up for consideration, March 12th, 1862, Mr. Garrett Davis of Kentucky, seeing that it was destined to pass, endeavored to have it so amended as to provide an appropriation of an hundred thousand dollars for the compulsory deportation of such Negroes. The idea of compulsory deportation did not carry, though an amendment offered by Mr. Doolittle of Wisconsin, providing for the appropriation of one hundred thousand dollars to aid the American Colonization Society in deporting and colonizing such free Negroes as were willing to leave the country, was adopted. In addition to the foregoing, the bill provided for paying loyal owners in the District of Columbia for loss of their slaves. In his message to Congress announcing his approval of this bill (April 16th, 1862), the President expressed himself as having been especially pleased to note that it "recognized both deportation and compensation." Soon after this, Mr. E. H. Rollins, Republican, from New Hampshire, introduced a bill for the repeal of all the "Black Laws" in the District of Columbia which was passed and duly approved May 21st, 1862.[13]

When the slave trade in the District of Columbia was broken up, the market was moved to Alexandria, Va., already known as the most choice slave market in the country,

13. This bill also provided that ten per cent. of the taxes paid by colored people of the District should be devoted to the education of their children.

and slave holders generally began to ship their slaves deeper within the lines of the Confederacy. This transferring movement became so lively, Senator Sumner induced Congress to pass a resolution requiring the Secretary of the Interior to furnish Congress with a list of slave holders in the District of Columbia, together with a list of their slaves, and steps were accordingly taken to prevent the further evasion of the Emancipation Act. This legislation was supplemented by an act approved July 12th, 1862, which provided that any colored person coming into the District of Columbia under any pretenses or circumstances, whether as an employee or otherwise, should be free.

While the public endorsed and applauded such legislation as the emancipation of the slaves in the District of Columbia, they did not for a moment cease their clamor for a general emancipation act as a war measure. And hardly a month had passed after these laws were enacted before Horace Greeley addressed an open letter to the President, asking him in the name of twenty millions, to free the slaves.[14] This letter made a deep impression throughout the country, not because of any pungency, for it contained nothing characteristic of the fulminations of a brilliant journalist; it was like a stirring, thrilling, ominous, still alarm. Mr. Lincoln, catching the spirit of the urgency of the message, telegraphed his reply which, together with the letter, was published far and wide. In his reply, the President asserted that his sole object and aim was the salvation of the Union; and that whatever he should do about the colored people and about slavery, would be done because in his opinion, it would help save the Union. "If I could save the Union with slavery, I would do it," said he; "if I could save it without slavery, I would do it." Delegation after delegation came to the White House daily and almost hourly, to entreat the President to declare the bondmen free. Finally when it appeared that whatever happened, conditions could hardly become worse, Mr. Lincoln, on September 22nd, 1862, issued his warning, giving notice to the South that either slavery

14. August 22, 1862—see American Conflict II, p. 249.

or the war must cease by January 1st, 1863. Puffed up with pride, flushed with victory and big with hope, the Confederacy scorned the Lincoln manifesto. The causus belli as then viewed by the South was no longer slavery, however prominent the part played by that question in the beginning. Nor was the South fighting for slaves. The question involved a principle which was as old as the government itself, namely, whether or not the Confederacy had a right to be. If it had the right of existence, it would of course make its own laws and maintain such institutions as it deemed desirable; if it had no such right, it could be determined only by the arbitrament of war. The question of holding slaves was, therefore, regarded by the South as irrelevant, so Mr. Lincoln's threat fell flat. Finally the first of January, 1863, came around and there was nothing for Mr. Lincoln to do but to issue his Emancipation Proclamation; its effect upon the spirit of the people was magical; the whole civilized world was electrified; and from that hour the Union was saved. Mr. Lincoln's private opinion of this act—the one great thing that he did that will be remembered when all else is forgotten—is set forth in a letter to A. G. Hodges of Frankford, Ky., under date of April 4th, 1864.[15] Said he, "I claim not to have controlled events but that events have controlled me." The most ardent Abolitionist did not expect to see the slaves liberated by act of Congress; there was no constitutional warrant for such action. To proclaim emancipation as a war measure was Mr. Lincoln's only resort and a too hasty exercise of this power would have hardly been safe.

15. Whitney, p. 288.

CHAPTER XII

Lincoln Again Offers Pay for Emancipation of Slaves—Resolutions in Congress Demanding Unconditional Emancipation—President Doubts Authority and Hesitates to Issue Proclamation.

When Congress met in December, 1862, everything was moving rapidly. In fact, events were taking such a sweep that sequence seemed wanting and all things were apparently happening together. Prospects for a settlement of the sectional differences or the cessation of hostilities were no where visible; the sky was still draped dark and deep with the smoke of belligerent cannon; the only response from the Confederacy to Lincoln's threat of September 22nd in connection with the proposed freedom of the slaves, was a challenge to battle. Mr. Lincoln clearly saw in this situation that the life of the Union was now inextricably mixed with and inseparable from the emancipation of the slaves. He also saw that the status of the freedmen would be the subject of new problems and determined to make another effort to open the eyes of the Confederates and to convince them to his views; and with such hope in mind, Mr. Lincoln recommended to Congress the passage of a bill providing that any state freeing its slaves by the year 1900 should receive pay in United States bonds; and that the freedmen should be deported.[1] But the President found that in addition to the South, he now had another stubborn body to deal with in the shape of Congress which had evinced a determination to pursue a more decided if not more drastic policy. On the very next day after receipt of the President's message (December 2nd), Mr. Elliott of Massachusetts introduced in the House a resolution declaring it to be "the duty of the President as Commander-in-Chief of the army to emancipate the slaves;" and at the same time Mr. Stevens

1. Annual Message Dec. 1, 1862.

offered a resolution to the effect that "the President be requested to declare free all slaves in the rebel states." Both of these resolutions were referred to the Judiciary Committee. Simultaneously with this movement in the House, Senator Pomeroy was having referred to a special committee "that part of the President's message which referred to compensated emancipation and deportation." Congress showed how widely it differed from the President on these questions a few days after this time (December 15th), by simply ignoring the bill introduced by Representative Noell of Missouri providing for the abolition of slavery in his state on condition that the masters be paid in United States Government Bonds. Missouri in common with several other states had been given an opportunity such as Mr. Noell now sought even as late as July 16th, 1862, when Mr. White, a Representative from Indiana, reported from the House Special Committee on Emancipation, a bill providing for the purchase of the slaves in Delaware, Maryland, Virginia, Tennessee, Kentucky and Missouri at the rate of three hundred dollars a piece, on condition that they should be freed within five years, which bill carried an appropriation of one hundred and eighty million dollars in Government bonds for paying for the slaves and twenty million dollars for the deportation of the freedmen. After the passage of the Confiscation Act it soon became evident that Congress, whatever might be the attitude of the Executive, was done with trying to compromise with the South.

Mr. Lincoln had very decided opinions both as to the feasibility and as to his duty and authority in connection with freeing the slaves. Mr. Julian declared that Mr. Lincoln was absolutely opposed to the emancipation of the slaves, and wanted it distinctly understood when his preliminary proclamation was issued that deportation of the Negroes was inseparably connected with the scheme; that Mr. Lincoln was at that time pressing upon Congress a scheme of colonization; and that it was by no means certain that had he foreseen the failure of his plan in this particular,

the Emancipation Proclamation would have been issued.[2] Mr. Whitney[3] who has been several times quoted and who knew Mr. Lincoln perhaps, better and more intimately than most any of his numerous biographers, in speaking of Mr. Lincoln's aversion to employing Negroes as soldiers, declares that "while he so reluctantly acquiesced in the scheme of arming the Negroes, he was a little earlier in time but equally reluctant to free them; and coupled with this necessity was his design to compensate such owners as would remain loyal to the Union, also to send the Negroes out of the country." Continuing, Mr. Whitney declares that the "reason for his conception of the policy of emancipation in 1862, was a belief that extremists at the North would withhold supplies from the government unless he freed the slaves." "This was threatened," says he, "in several high quarters, both from excitable persons like Greeley, Phillips and Lovejoy, also from imperturbable leaders like Andrews, Curtain and Raymond[4] * * * . In this dire distress, the President, conscious that he must make terms with the radicals, held an interview with border state people on July 12th, 1862, and implored them to concur in his poilcy of emancipation with compensation. But his pleading was to deaf ears. The next day, the President informed Seward and Wells, members of his cabinet, that he must liberate the slaves—no other alternative was in sight. Still he hesitated and implored the Almighty to avert a necessity for so extreme and revolutionary an act, using the same words of our Savior, "Father, if it be possible, let this cup pass from me."

2. Life of Hon. George W. Julian. Julian was a member of Congress and a staunch Abolitionist.

3. Whitney, p. 362, etc. Julian's "Political Recollections."

4. Governors of Mass., Penna., and N. Y., respectively.

CHAPTER XIII

The Edict of Emancipation—The Thirteenth Amendment—Civil Rights in the District of Columbia—The Penniless Freedmen—Establishment of the Freedman's Bureau—The Death of Lincoln.

The slavery system had been so disorganized through the exigencies of the war that by 1863 the fealty of the colored people to their masters was more potent in maintaining the statu quo than any fear of coercion on the part of the slaves. The rich plantations of the South had been ruined and the people impoverished through their support of the Confederacy. Thousands of slaves had already broken away from their chains and gone far beyond the reach of patrols by the first day of January, 1863. Aside from this situation in the South, the country at large was by far more interested in the result of battles that were in constant progress than in the question as to what was being done concerning the slaves. President Lincoln's final edict declaring the slaves free in the rebellious states on and after January 1st, 1863, did not cause a single ripple of excitement beyond the frantic jubilation of the freedmen.

The first great epoch in the history of the Negro in America was now past after extending over a period of two hundred and forty-four years (1619-1863). In view of the light esteem in which Negroes were held, especially just before the war, by the vast majority of the people of the United States and even by the very man who signed the Emancipation Proclamation, the consummation of their freedom at that time was little less than miraculous. In his message of December, 1863, Mr. Lincoln had but little to say concerning his proclamation freeing the slaves. He knew and all knew that the efficiency of his proclamation depended entirely upon the final outcome of the war; and the language of his message plainly revealed the fact that

even then he would have been willing to have sacrificed anything to stop the war. The fortunes of war had at last turned in favor of the Federal forces and it needed no prophet to foretell what the end must be. At the beginning of its session, therefore, Congress at once began to formulate plans for making universal freedom in the United States a part of our organic law. Prominent among the propositions for a constitutional amendment submitted in the House, was one by Thaddeus Stevens, March 28th, 1864; while in the Senate propositions of a like purport were submitted by Senators Sumner and Henderson, that of the latter having subsequently been reported and adopted in almost the exact language of its author.[1] There was now an apparent disposition on the part of Congress, which maintained a position ahead of the Executive and behind the people, to slow up and watch the effect of the radical legislation already adopted. There were certain men in Congress, however, who viewed the general emancipation act as a mere frame into which real emancipation had to be set. Mr. Sumner, who was Chairman of the Special Committee on Emancipation, in the Senate, at once turned his attention to the District of Columbia and reported a bill, December 10th, 1863, intended to secure the equality of all before the law in the District; and this was soon followed by another act forbidding the exclusion of colored persons from the streets cars in that place.

The Senate passed the Thirteenth Amendment on April 8th, 1864, but the measure was not brought to a vote in the House until June 15th, when it failed for want of the requisite two-thirds vote, there having been 93 votes for to 65 contra, while 23 members refused to vote. Mr. James M. Ashley on seeing that the measure was about to be defeated, changed his vote from the affirmative to the negative, and at the same time gave notice to the House of his intention to move for a reconsideration of the motion by which the measure was defeated. Mr. Ashley upbraided his colleagues of the House for their refusal to support the

1. Globe First Session Thirty-eighth Cong., pp. 145, 553.

amendment on its first vote. These men were afraid to go on record, however, in favor of such legislation until they had seen how the forthcoming election would result. As Mr. Ashley had predicted, in the elections of November, 1864, the supporters of the Thirteenth Amendment were overwhelmingly victorious, the matter having been made a special issue. In view of this situation and of the further fact that the President urged the adoption of the amendment in his annual message, when the House met in December there was nothing to be done about the matter but to take a formal vote giving its approval, which vote was taken on January 31st, 1865, when the amendment was passed by a vote of 119 to 56. It was enrolled and sent to the President who signed it February 1st, and slavery so far as it could be affected by national legislation, was forever abolished in the United States.

The colored people's "Far off divine event" at last had come; the time of which thousands had dreamed enchanted, only to be awakened in disappointment; the time when old things for them had passed away and their new heaven and new earth suddenly appeared. Freedom with all its supposed privileges had come,—actual, visible freedom; and this was not only now a tangible fact, but it was magnified and exaggerated. The responsibilities of freedom had come, too, silently, grimly, uncompromisingly; but these were unappreciated by the freedmen in the sudden glare of glory. Whatever the theory may be, the practical test as to whether a man ought to be free is involved in his ability to maintain himself as a freeman; and there is never any question about this where one seizes his freedom. The colored people who were not slaves before the war had maintained themselves in a most commendable manner, it is true; but they were given or gained their liberty under normal conditions, and the test was only fair. But here were four million freedmen turned loose without a dollar or a crust of bread and no shelter but the canopy of heaven; old men and women who had spent their many winters under the yoke, and young children, none of whom ever knew what it was to shift for

themselves. For many days thousands of these poor people who had been angrily driven from their cabins, had to sleep on the bare ground and subsist upon fruit and herbage. But the government that freed them did not require them to perform the impossible feat of self maintenance from the beginning, though help could not be at once extended to all as we have just observed. The Freedman's Bureau, however, was promptly established by an act passed March 3, 1865. Section 4 of the Act creating this Bureau provided as follows: "That the Commissioner under direction of the President, shall have authority to set apart for the use of loyal refugees[2] and freedmen such tracts of land within the insurrectory states as shall have been abandoned or to which the United States shall have acquired title by confiscation or sale or otherwise; and to every male citizen, whether refugee or freedman, there shall be assigned not more than forty acres of such land, and the person to whom it is so assigned shall be protected in the use and enjoyment of the land for the term of three years at a nominal rent not exceeding six per cent. of the value of such land as appraised by the state authorities in the year 1860 for the purpose of taxation." The Act further provided that at the end of said term or at any time within said term, the occupants might purchase the land and receive such title as the United States might have.[3]

Slavery to which we bowed so long either in adoration or in fear; that robbed the nation of rest and peace for two centuries; that during four years alone, cost billions in money, to say nothing of the imponderable loss of life and the long sufferings of a race, had now struck about its last blow of resistance, having had only one more to strike by which the culmination of its evil genius was to be made manifest; and this was to be aimed at the President who had "charity for all and malice towards none;" whose life was the climax of the 19th century towards which events for-

2. The term applied to southern whites who were loyal to the Union and were exiled from that section on that account.

3. U. S. Laws, Second Session Thirty-eighth Cong., p. 141.

ages had pointed, his position marking twelve on the dial of modern institutions involving the liberties and governments of people. Mr. Lincoln was the star actor in the great tragic drama of the ages in which another noted player spoke his "Principles of Civil Government," Tom Paine, his "Rights of Man," Jefferson his immortal Declaration, while Burns and Whittier joined in a chorus of song. In this great tragedy, staged at the beginning of man's history, in which the world's heroes have sought to interpret the emotions and strivings of the parties and races they represent, emanating from man's love of home, clan and country, the divine author assigned to none more beautiful lines than those put into the mouth of Lincoln: "With charity for all and malice towards none."[4]

4. Lincoln was assassinated by John Wilkes Booth at Ford's Theatre, at Washington, D. C., on the evening of April 14, 1865.

CHAPTER XIV

The Colored Soldiers and Their Status—Discrimination as to Pay and Treatment—Massachusetts' Colored Troops Refuse Pay—Officer Littlefield's Report—The Draft Act—The Commission to Pay Loyal Masters.

Notwithstanding Mr. Lincoln's opposition to the employment of colored men as soldiers and the fact that white men of the soldier class violently asserted their objections to fighting with Negroes as comrades, the colored people seemed to have felt instinctively that they had much at stake on the result of the war and that their welfare and interests were inseparably connected with those who supported the Union. Negro soldiers were no new thing. L'Ouverture,[1] three quarters of a century before this time, had taught the world his immortal lesson in patriotism, and the use of arms; Salem[2] and Warren[3] had fallen as comrades at Bunker Hill; the blood of colored men had flown, speaking as it went, mingling with that of other Americans in the war of 1812. But persistent opposition to such troops was now developed for the first time in all our history. We have already noted how many of the objections to colored troops being used in the war were met and overcome. Colored men were now eager to enter the army, and the government sorely needed them, but did not want to give them a definite status as soldiers.

Among the troops which Massachusetts sent to the field in the early part of 1863, were two regiments of colored men whose status in the army was rather anomalous. In July, 1862, Senator Wilson introduced a resolution amending the Act approved February 28th, 1795, providing for the calling out of the militia, which amendment, among other things, provided that all persons who should be enrolled in

1. Haytian Negro General.
2. Peter Salem, Negro, who shot Major Pitcairn, British officer, at Bunker Hill.
3. General Warren, American Commander.

the army under this Act should receive the pay of regular soldiers except "persons of African descent who should receive ten dollars per month and one ration." Hereupon, Senator Sherman moved to amend the Wilson resolution so as to provide that three dollars per month of the ten dollars should be retained for clothing and this amendment was agreed to and the measure passed in that shape. There was also embodied in the same measure, which was made a part of the Confiscation Bill, provision for the freedom of the mother, wife and children of colored men enlisting under the Act. This part of the Act referred to slaves of rebel masters only; the status of those belonging to loyal masters was touched upon in our first notice of the bill where provision was made for the freedom of the slave with payment of bounty, etc., to the master. The pay of white soldiers at the time was fixed at thirteen dollars a month in addition to clothing and supplies, besides being allowed two rations a day. The Wilson-Sherman measure, which was meant to apply to free Negroes like those of Massachusetts, therefore, was very discriminative as between the colored and white troops. The Massachusetts regiments above referred to were duly received in the service of the United States and at once sent to the front; and soon many of these men were asleep on Sullivan's Island with their gallant leader, Colonel Shaw. The paymaster arrived in due course and tendered the amount arranged for under the Act of Congress just mentioned. The money was refused. No word of protest was uttered nor was there a murmur heard from these soldiers. The State of Massachusetts gratuitously offered to make up the difference but the offer was refused. Month after month passed while nothing but hard fighting and harder treatment went to make up the history of these colored soldiers for the Union. Benevolent citizens of Massachusetts anxiously besought these troops to accept private donations from them but all were respectfully declined. The fact that every time the paymaster came around he found fewer and fewer of the now veterans to whom it was his duty to offer this insult, told plainer than words what was happening to these men, the

bones of many of whose comrades were whitening in the fields and swamps of the South where they had been killed in battle or had been murdered as prisoners of war while fighting in defense of a nation whose Representatives were quibbling about according them the rights of common soldiers. And a whole year passed before Attorney General Bates, in co-operation with the Secretary of War and many field Generals, succeeded in inducing Congress to abrogate this statute. In connection with his bill for the equalization of the pay of soldiers employed in the United States army, Senator Wilson, on February 3, 1864, read a report from M. S. Littlefield, who was in command of the colored troops at Folly Island, of which the following are extracts, being answers to specific points of inquiry made by the Senator: "The amount of work done by black soldiers as compared with the whites was as 56 to 51. * * * These men, as soldiers, have been severely tested, tried as they were for fatigue men. * * * The assaulting column at Fort Wagner, July 18, was led by the Fifty-fourth Massachusetts; and their decimated ranks and the number of the dead picked up in the trenches and on the parapet and in the fort speaks plainer than words of their bravery in that sanguinary conflict. * * * They entered into the engagement with an enthusiasm rarely equaled and never excelled." The report further went on to say that "the Fifty-fourth Massachusetts entered the service on May 28, 1863, with full ranks. This regiment lost in killed in battle 59 men, every one of whom died in debt to the government for supplies, having received no pay and their families no pension or bounty. There were wounded of this regiment, 155; the greater portion of these were discharged without pay. Every man who fell at James Island on July 6 and Fort Wagner July 18, was in debt to the government for clothing; they have died and received no pay."[4] Mr. Wilson's measure provided, Section 2: That colored and white soldiers should be subjected to the same treatment in every particular. This section applied especially to

4. For full report see Globe, First Session Thirty-eighth Congress, p. 480; see also Gen. B. F. Butler's Book, Chap. XVI.

those enlisting after January 1, 1864. Section 3 provided that all persons who enlisted in response to the call of the President for three hundred thousand volunteers on October 17, 1863, should receive the same amount of pay, bounty, etc., regardless of color. Section 4 provided that all persons who were free April 19, 1861, and had enlisted in the service of the United States, should be entitled to receive the same pay, bounty, etc., as were then allowed by law to other persons in the service at the time. This Act was duly approved and became law June 15, 1864. It was afterwards amended, June 15, 1866, so as to provide that there should be a presumption of freedom in case of enlistment unless otherwise stated. And by an Act passed March 2, 1867, the word "white" was stricken out of all our military laws. Congress provided for the payment of back wages, etc., due the colored soldiers by an Act passed June 6, 1866. The Draft Act, which was approved February 24, 1864, provided for the enrollment of all able-bodied colored men between the ages of 20 and 45 years; that when the slave of a loyal master should be enrolled under the Act, his master should receive one hundred dollars and the slave should be free; that Congress should appoint a commission in each state to award pay to such loyal masters as claimed service of any colored soldier in the army, the amount not to exceed three hundred dollars, as bounty money. Some of the provisions of these Acts may be confusing unless one keeps in mind the particular classes to which they were intended to be applied. The Wilson measure just referred to was retroactive and was intended to apply to colored soldiers who were free at the beginning of the war, like the Massachusetts regiment; to those who were freed by the proclamation that went into effect January 1, 1863, and to those who escaped from rebel masters prior to that time and enlisted in the army. The Act of February, 1864, had particular reference to the colored troops recruited in slave states not covered by the Emancipation Proclamation where the whites were presumably loyal.

The position of the colored soldier in the Civil War has no parallel in history. The Supreme Court of the United States

had just decided that they were not citizens; Congress refused to treat them as soldiers; their comrades refused to treat them as men. Warriors they were indeed, but warriors without a country, regiments without a flag, soldiers without comrades. They fought for a government that openly struggled to deprive them of all the benefits of victory; for a country in whose glory they were openly denied any share; for a people who hated them as cordially as the enemy against which they contended. They fought without promise, without money and almost without hope. Their record forms a new page in history without a precedent and which, doubtless, will be without a subsequent.

CHAPTER XV

Just After the War—Reconstruction—Republicans Divided into Radicals and Conservatives—Probable Attitude of Lincoln—The Sumner Plan—Hints at Extension of the Suffrage—Congress Petitioned to Extend Suffrage—The Black Code Attacked—President Johnson and Congress at Odds—The Growth of Radicalism—Suffrage in the District of Columbia—The Power of the Freedman's Bureau Extended—Negroes put into Possession of Land by Sherman.

"The cruel war" was over. Lee had delivered to Grant his sword and Grant had returned it with the pregnant words: "Let us have peace," and the great Virginian had bidden farewell to his staff, saying to them, with his eyes suffused with tears, "We have fought through the war together;" yet the sectional strife, with the Negro as the bone of contention, had really just begun. The scene of the struggle was only transferred from the battlefield to Congress, towards which all eyes were now turned. The southern whites looked to Congress to know what would be done with particular reference to them; the colored people looked to Congress to know what would be done particularly for them, while Congress itself was puzzled to know what ought to be done and what could be done to conserve the best interests of all concerned. The cessation of hostilities was about as confusing as their continuance had been. The relation of the seceded states to the national government; the necessary steps to be taken to induce or compel the southern whites to recognize and respect the freedom of the blacks; the most practical methods to be pursued in teaching the freedmen properly to appreciate their own manhood and responsibilities were matters which demanded the most profound statesmanship and diplomatic skill. The mere termination of hostilities seemed to have satisfied those who were solicitious only for the salvation of the Union; many others seemed to have thought that the mere abolition of slavery was enough. After saving the Union and

abolishing slavery who could ask for more? To hope for more was to be an impractical theorist; to demand more was to be a fanatic. In their great joy over the ending of the war, the great body of the people forgot that the whole resulted in raising by far more questions than had been settled; that the conflict destroyed the quasi order, that was, leaving our whole social and political systems in chaos and confusion.

A conflict at once arose in Congress between those who desired to reconstruct the governments of the seceded states in accordance with the new order of things, and those who did not want anything done to remind the South of its defeat. Even during the war there had been those known as "Copperheads," such as Vallandingham, of Ohio, and Fernanda Wood, of New York, who consistently championed the cause of the secessionists as earnestly, if not as ably, as Messrs. Davis and Toombs had done, and the number of more or less vigorous opponents of Republican legislation now began rapidly to increase. In the meantime the South began to settle on a policy of its own in regard to the treatment of the freedmen which involved a determination to exterminate them. This apparent intention on the part of the white people of the South to exterminate the colored people or reduce them to a position more intolerable than what slavery itself had been, coupled with the serious disagreement between President Johnson and Congress, is responsible for much of the radical legislation enacted by Congress during that period. The pitiable situation of the freedmen in the South was notorious, and when the first session of the Thirty-ninth Congress met December 4, 1865, there was a shower of petitions and bills bearing upon the matter. Everybody seemed to have had a plan of his own. As to what Mr. Lincoln might have done in this crisis had he been living is a matter of conjecture. Though he was chary of speech where definite plans and policies were concerned, he had said and done enough before his untimely death to let it be known that he was far from being a radical reconstructionist. Mr. Lincoln would go only so far as to say that the seceded states "were out of relation with respect to the government." During the last days of the first session of

the Thirty-eighth Congress a joint resolution was passed by both Houses prescribing the conditions upon which the rebellious states might be received back into the Union and declaring the attitude of Congress towards them as follows: First, that they "should be allowed to cast no electoral votes;" second, that they "should not be allowed to elect United States Senators and Representatives;" third, that they "should be required to acquiesce unreservedly in the Thirteenth Amendment." Mr. Lincoln refused to approve this measure and accomplished its defeat by "pocketing" it, or holding it up without signing or returning it until after Congress adjourned; he then undertook to substitute for this Act a plan of his own by proclamation and in so doing gave grave offense to several members of Congress who had been his most ardent supporters.[1] Further light is shed upon the probable course of Mr. Lincoln by the later position of certain Congressmen who were known always to reflect the sentiments of the Executive with more or less accuracy. These abject followers of the Executive returned to Washington prepared to advocate a much weaker policy. During the last days of this Congress Mr. Ashley brought up a bill involving the same matter as that encouched in the bill which Mr. Lincoln declined to approve, in such an emasculated form that he himself was displeased with it and characterized it as a mere compromise; but as it savored of an extension of the suffrage it failed and it was openly charged on the floor of Congress that the failure of this, too, was due to the opposition of President Lincoln to such measures. Garfield, Conklin and a number of others were on the very verge of a breach with the Lincoln administration, while both Mr. Ashley and H. Winter Davis arraigned Mr. Lincoln on the floor of the House in no uncertain manner.[2] There is but little doubt that Mr. Lincoln would have had to mend his pace in order to have kept up with the Congress elected just after the war by men who had gained much practical knowledge of the temper and conditions of the southern people and who, perhaps, had some vivid

1. See Appendix.
2. Globe, February 21, 1865, p. 968.

memories of the prison pens at Andersonville or Libby. One of the biggest and most puzzling questions confronting Congress at this time was as to the status of the seceded states. Were they living members of the Union only "out of relation with the national government," or were they not only dismantled but dead members of the Union and as such, had no political rights except such as Congress might now confer? Mr. Sumner, the leader of the radicals in the Senate, embodied his notions as to the matter in resolutions offered before the Senate December 4, 1865, of which the following is a resume: "Resolved that it is the first duty of Congress to take care that no state declared in rebellion shall resume its relations to the Union until the satisfactory performance of five several conditions, which conditions precedent must be submitted to a popular vote and be sanctioned by a majority of the people of each state respectively as follows: 1st, The complete re-establishment of loyalty as shown by an honest recognition of the unity of the Republic and duty of allegiance to it at all times without mental reservation or equivocation of any kind; 2nd, the complete suppression of all oligarchical pretensions and the complete enfranchisement of all citizens, so that there shall be no denial of rights on account of race or color, but justice shall be impartial and all shall be equal before the law; * * * 5th, that states can not be precipitated back to political power and independence, but must wait until these conditions are in all respects fulfilled." In another set of resolutions presented the same day Mr. Sumner suggested the calling of conventions for the purpose of reorganizing these state governments setting forth who should be eligible to participate in the same and declaring that "no government of a state recently in rebellion, can be accepted as Republican where large masses of the citizens who have always been loyal to the United States are excluded from the elective franchise, and especially where the Union soldier with all his kindred and race * * * * are thrust away from the polls to give place to the very men by whose hand, wound and death were inflicted; more particularly where, as in some of the states, the result would be to disfran-

chise a majority of the citizens who have always been loyal and give to the oligarchical minority recently engaged in carrying on the rebellion, the power to oppress the loyal majority, even to the extent of driving them from their homes and depriving them of all opportunity of a livelihood. * * * No government can be accepted as Republican in form where a large portion of the native-born citizens, charged with no crime and no failure of duty, is left wholly unrepresented although compelled to pay taxes; and especially where a single race is singled out and denied representation, though compelled to pay taxes." At this particular time Senator Sumner stood practically alone in his position on the question of reconstruction; the obstinacy of President Johnson and the activity of the Ku Klux Klan, however, soon compelled many others to join Sumner and the radicals, though not before he had been much berated as a "crank" and visionary even by many of his Republican colleagues. Senator Sumner's sentiments soon began to be echoed outside of Congress. The legislatures of several states passed resolutions requesting Congress to extend the suffrage. In nearly all the states there were two sets of laws—one for the whites and another for the colored people. And not only was there a difference in the privileges under the law in regard to the two races, but the penalties and punishments differed as well. The formulation of a most iniquitous system of "black laws" was the first thing done by the southern states upon their finding out that emancipation was a fact. The shameless character of these codes was brought to the attention of Congress and on December 3, 1865, Mr. Thaddeus Stevens offered a measure which provided that all national and state laws should be equally applicable to all citizens among whom there should be no discrimination on account of race or color. This measure was adopted by the House after an extended debate and many bitter passes between the members. The Stevens proposition was not so radical as the position of Sumner, whose resolutions sounded the keynote of both the Fourteenth and Fifteenth Amendments. Indeed, Mr. Sumner brought this measure forward in the first instance as a proposed Four-

teenth Amendment to the Constitution, but it was not reported out of the Judiciary Committee to which it was referred.

As the policy of Congress in relation to the freedmen assumed a more aggressive tone, the more evident became the friction between that body and the President. Mr. Johnson was a southern man and before the war had been a most fearless champion of his section. As a Republican he was known to be a Conservative of the Conservatives; it was suspected and even feared in some quarters that he had never experienced any real change of heart on the questions of dealing with colored people. He never had the confidence of the radicals in Congress who first doubted, then disputed and finally attacked him. Thaddeus Stevens was chief among those who opposed him in the House, and in speaking of the bitterness of Stevens against President Johnson, Senator Doolittle said, insinuatingly: "He (Stevens) goes with the furtherest and is most bitterly opposed to the present administration. He stigmatizes Andrew Johnson as an alien enemy and opposed his nomination at Baltimore."[3] Mr. Stevens was very little if any behind Sumner in his advanced attitude on the race question. Referring to the matter in a speech delivered in the House on December 18, 1865, Mr. Stevens said: "The infernal laws of slavery have prevented them (the colored people) from acquiring education, understanding the commonest laws of contracts or managing the ordinary business of life. This Congress is bound to provide for them until they can take care of themselves. If we do not furnish them with homesteads and hedge them about with laws; if we leave them to the legislation of their late masters, we had better left them in bondage. Their condition would be worse than that of our soldiers at Andersonville. If we fail in this great duty, now we have the power, we shall deserve and receive the execration of history

3. Col. A. K. McClure, of Philadelphia, who was on most intimate terms with Mr. Lincoln, declared that Johnson was nominated for Vice-President at the Baltimore Convention in 1864 solely through the influence of Lincoln, who wished to have a War Democrat as his running mate rather than Hamlin, who had been elected with him in 1860, hoping in this manner to show his spirit of conciliation towards the South. Mr. Nickolay, an employee of the White House during Lincoln's first administration, and one of Lincoln's biographers, denies the correctness of Colonel McClure's statement. There is little doubt, however, but that Colonel McClure was quite correct.

and of all future ages. * * * Without the right of suffrage in the late slave states I believe the slaves had better been left in bondage. * * * Sir, this doctrine of a 'white man's government' is as atrocious as that which damned the late Chief Justice (Taney) to everlasting fame and, I fear, to everlasting fire."

The situation in the South was now such as to leave Congress but little choice about the matter of radical reconstruction, and it was evident that the freedmen had to be made auxiliary in connection with any plan that might be adopted if the government entertained the least hope of carrying it out. Popular clamor for relief was constantly increasing and Congress was compelled to act without delay. On one day Senator Sumner presented petitions numerously signed by citizens of Massachuetts, Missouri, Kentucky, Indiana, Ohio, Illinois, New York and New Jersey, in all of which the extension of the suffrage to the freedmen was either suggested or demanded. The "Black Codes" were still in force, though the law abolishing them went into effect the latter part of December, 1865. Until the Act abolishing these discriminating laws went into effect, colored people were not only not allowed to give testimony in court but had absolutely no defense against the treatment to which they were subjected. The first definite steps for the extension of the suffrage were taken on December 5, 1865, when Mr. William D. Kelly, of Pennsylvania, introduced a bill in the House for the extension of the suffrage in the District of Columbia. A similar measure was introduced by Mr. Julian on December 11. The Kelly measure was taken up by the House and passed January 18, 1866, by a vote of 116 to 54.[4] This bill was reported by the Senate Committee on the District of Columbia on February 21, 1866, without amendment; although it was called up on June 27, it was not finally disposed of by the Senate until the next session, when it was again called up and passed on December 13, by a vote of 32 to 27.[5] In the meantime, the opponents of the measure, determined to get the benefit of the

4. "When the vote was announced," says the Reporter, "there was great applause on the floor and in the galleries."
5. President Johnson vetoed it, but it was finally passed over his head.

moral effect of a popular vote against it by the white citizens of Washington, and so on December 21 they voted on the question at a popular election. Mr. Richard Wallach, Mayor of Washington, reported the result of this vote to the President of the Senate on January 5, 1866, as follows: Against Negro suffrage 6591; for Negro suffrage 35; majority against the proposition 6556. The Mayor was much elated over the result and in closing his report, he said: "The people, claiming an independence of thought and the right to express it, have thus given a grave and deliberate utterance in an unexaggerated manner to their opinion and feeling on this question." But the whole thing fell flat as everybody knew what to expect of an old slave mart like Washington; the election was regarded as a farce. Congress finally settled the whole matter by depriving the city of its charter and taking the government of the District of Columbia into its own hands as authorized and empowered to do by the Constitution. The South having persisted in its contumacious course, Congress now began to consider coercive measures, and to this end a bill was introduced in the House on January 5 for the extension of the powers of the Freedmen's Bureau. When the Bureau was first organized only a temporary arrangement was contemplated and the Bureau was given few powers which were limited and strictly construed; the Act extending its powers specifically provided for its continuance until especially abolished and for the exercise of its functions in behalf of freedmen and refugees wherever such persons might be found, and conferred upon the Secretary of War authority to issue to them clothing, fuel and supplies. Section 3 of the original bill was amended so as to provide for setting apart some three million acres of land in Florida, Mississippi and Arkansas for homes for freedmen upon the payment of a nominal consideration. General Sherman, by a field order, dated at Savannah, January 16, 1865, had put certain lands which he had found abandoned along the sea coast of Georgia and South Carolina into the possession of freedmen. This naked grant as it stood was not only of indefinite duration but was of doubtful validity; the matter was taken up in connection with the Bu-

reau Bill, the Sherman order was confirmed and indefeasible titles were vested in the holders for a term of two years. Senator Trumbull, who called the Sherman order up in connection with the Bureau measure, intended to have these titles simply confirmed, but after a long debate it was agreed that possession should be limited to two years.[6] The bill also provided for the securing of land and erecting thereon asylums, schools, etc., for freedmen; for putting under martial law any state or section where persons of color were denied their civil rights; section 8 of the bill being as follows: "And be it further enacted that any person who, under color of any state or local law, ordinance, police or other regulation or custom, shall in any state or district in which the ordinary course of judicial proceedings has been interrupted by the rebellion, subject or cause to be subjected, any Negro, mulatto, freedman or refugee, or any other persons on account of race or color or any other cause, to the deprivation of any civil right secured to white persons or to any other or different punishment from that to which white persons are subjected to for the commission of like acts or offences shall be deemed guilty of a misdemeanor and be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year or both." The Bureau was made responsible for the enforcement of the Act under direction of the War Department. It was especially provided, however, that the Bureau should yield control of these affairs as soon as the states should resume their functions. And although the measure was simply intended as a penalty upon the recursancy of the South from which they might have had instant relief by resuming in good faith their functions as states, the measure was most vehemently attacked in Congress especially by men from the border states like Kentucky and Delaware.[7] The border men claimed that such legislation was humiliating to their states and the Democrats attacked the

6. Mr. Stevens contended that these lands had been forfeited under the Confiscation Act of 1862; and in any case, the government ought to procure land for the freedmen, not exceeding 40 acres. It was in these debates that the "40 acres of land and a mule for each freedman" was first made prominent.

7. The bill was passed over the President's veto, July 16, 1866. See Laws of U. S., Thirty-ninth Congress, p. 367.

measure generally on the ground that it provided for a useless expenditure of money. Senator Salisbury, of Delaware, most eloquently declared that such a law could have no possible application to his state. It was a notorious fact, however, that there were places even in Ohio, Indiana and Illinois, bordering on the slave states, where the feeling against Negroes was so intense that no colored person ever dared to show himself, under penalty of the most cruel torture or even death. Even unto this day colored people are about as scarce in these spots as they are in the north of Europe. Many of these places became celebrated for the sport their inhabitants enjoyed in the chase after fugitive slaves, driving them through woods and fields with clubs and stones until the panting fugitive reached the river into which he would often plunge to death rather than to be caught and be tortured for the amusement of the people and then finally returned to the southern marl.

CHAPTER XVI

The Necessity for Clothing the Freedmen with Citizenship—The Fourteenth Amendment—The Sentiment of the South—The First Civil Rights Measure—Sumner's Radicalism—The Stewart Proposition—President Johnson's Plan—The Commission to Pay for Slaves of So-Called Loyal Masters.

The exigencies of the times gradually made it apparent that emancipation alone was simply a destructive act; that the quasi protection which colored people had been receiving in return for life had been now taken away, leaving them without security in the enjoyment of either their quasi liberties or their lives; that interposition of the government on behalf of the freedmen was absolutely necessary. This intervention could be made effective only by placing within the reach of the colored people themselves such means of self-help as might be afforded by clothing them with citizenship. For, however odious the decision of Judge Taney might have seemed, it had to stand as law until abrogated or repealed. Negroes might have been construed to be citizens by implication if they had been in the enjoyment of the priviliges of citizens; but since this was not generally true any more in 1866 than it had been at the time of the Dred Scott Decision, an express Act of Congress was necessary to confer citizenship. Besides all this, "the three-fifths of all others" clause in the Constitution would now have to be left to the construction of the Supreme Court, which would doubtless have found a way out of the difficulty at the expense of the Negroes, as Taney was not the only genius on that Bench or the only one that has graced it since his time, unless the situation should be handled by Congress.

Among the many propositions embodying a Fourteenth Amendment to the Constitution was one by James G. Blaine, as follows: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their re-

spective numbers which shall be determined by taking the whole number of persons, except those to whom civil or political rights are denied or abridged by the constitutions or laws of any state on account of race or color." Against this proposition it was argued that it constitutionalized the disfranchisement of a portion of the people; that while the constitution and laws of a state might confer pretended rights of franchise, the people themselves might seek to determine who should exercise such rights.[1] A scheme for the apportionment of Representatives on the basis of voters was also suggested, but as this would affect the northern states as much as the South, it gained no favor. The subject had not yet reached the stage where the conferring of the suffrage on the freedmen was generally advocated with boldness, though Mr. Bingham in a discussion of the general subject, called attention to the fact that when a motion was made in the Confederation Convention of 1778 to limit the citizenship by use of the word "white" it was rejected with scorn. He added that he "intended by the help of Congress and the American people, to have inserted in the Constitution an affirmative declaration abolishing distinctions as to citizenship in the United States based on race or color." Such sentiments were now beginning to be echoed about both Houses of Congress, especially since it appeared that President Johnson was aiding the South in its stubborn course in regard to reconstruction. Senator Howe delivered himself of a fierce attack upon Mr. Johnson, whom he jointly arraigned with the South in opposing the spirit of the Thirteenth Amendment. Referring more particularly to the South, he said: "They mean to monopolize, in spite of emancipation, the freedman's labor, to control its wages and appropriate its proceeds; they mean to do more; they mean to convince the American people that emancipation was a blunder and a crime. If you who are responsible for emancipation ardently desire to be damned for it, you have only to place it into the hands of its most relentless enemies to administer and illustrate." Mr. Howe further declared that the South would make unremitting efforts to

1 See Appendix for Supreme Court Decision on this point.

stir up revolt on the part of the blacks and described how their papers would be filled with visionary repetitions of the horrors of San Domingo, and thought that oppression cunningly devised and persistently applied might possibly lead the freedmen to revolt.

Another proposition for the apportionment of Representatives and the one that was finally embodied in the Fourteenth Amendment as passed was the one offered by Mr. Roscoe Conklin January 15, 1866. Mr. Stevens, who was Chairman of the Joint Committee of Fifteen otherwise known as the Reconstruction Committee, composed of members of both Houses, reported the Conklin proposition on January 22. Mr. Conklin ably championed the measure and declared, in answer to criticisms such as had been urged in the discussion of the Blaine proposition, that "if a race in any state is unfit to vote and fit only to drudge, the wealth created by its work ought to be taxed; those who profit by such labor ought to be taxed for it." According to the apportionment of 1860 there were 251 Representatives, 156 from free states and 85 from slave states, 18 of the latter representing three-fourths of the slaves as follows: 1 each from Alabama, Arkansas, Kentucky, Missouri, Tennessee and Texas; 2 each from Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia. Mr. Conklin was naturally gratified to see his proposition adopted, but Mr. Blaine, whose resolution was something like that of Mr. Conklin, openly accused the latter of having taken the substance of his measure, changed the language and then assumed the original authorship. Mr. Conklin, proud and sensitive as he was, felt this accusation keenly; and it is not unlikely that this incident went far towards precipitating the grave breach between these two gentlemen that became so openly manifest in after years and which was never healed. The Conklin measure, however, did not escape the sharpest criticism. It was contended that it left too many loopholes through which the South might slip out. In truth, it was very much as Mr. Stevens observed: "There were about as many theories as there were Representatives," all of which seemed to have had some elements of practicability. Some wanted

provisions made forever disfranchising all of those who took a leading part in the rebellion. Mr. Jehu Baker, of Illinois, strongly urged the insertion of such a provision in a lengthy speech in the House, and in connection with his effort, read extracts from letters he had received from certain government officials in the South. The following is an extract from a letter written by Gov. W. G. Brownlow, of Tennessee.[2] "There is better feeling in Tennessee than in any other southern state. * * * I give it as my candid opinion that if the military forces were removed from Tennessee the legislature would be at once dispersed by a rebel mob. * * * Rebel juries are indicting Federal soldiers and officers and either binding them over to court in heavy bonds or casting them into prison for executing orders given them by our generals as far back as the days of Rosecrans and Stone River! And many of the rebels speak openly and say Union men and Yankees shall not live in the country. * * * I believe the South is full of rebellion and is seeking to accomplish by legislation and through Congress what it failed to do on the field of carnage—destroy the government." The following is extracted from a letter written by A. J. Fletcher, another prominent official of Tennessee: "The sympthizers with the 'just but lost cause,' will form a compact party in this state held together by hatred of those whom they have branded as Tories for deserting the South in her extremity, by a determination to keep the Negro in a condition as near slavery as possible and probably by a desire to keep the South united with a view to ulterior designs. The loyal people having seen the great object of saving the Union accomplished, will not contest seriously for mastery of the state. They will remain loyal to the great Union party of the nation, but in a subdued and discouraged temper. Many will yield and go with the vast majority. * * * These are consequences almost certain to follow the abandonment of the loyal people by the general government." People of the present day know how completely this prophecy of Mr. Fletcher has been ful-

2. Mr. Brownlow was a native of Tennessee, but was bitterly opposed to secession and for this he was expelled. He returned just after the war and was made Governor by the Reconstructionists.

filled in the complete banishment of the Republican party from the South. But all these things worked themselves out by perfectly natural and even normal processes. On the question of slavery the South was solid before the war and since the war everything has conduced to the maintenance of this solidity. Feeling of resentment towards a victor is naturally to be expected on the part of the vanquished; and such feeling in connection with the changed status of the colored people in their midst, tended to cause all southerners to unite in a common fight against the Republican party which was looked upon as being responsible for the whole matter. The permanent occupation of the South by the Federal militia was out of the question; still this was about the only means by which a lasting control of affairs by the "Union party," to which reference is made by Mr. Fletcher, could ever be secured. While the suffering of the freedmen could not be entirely avoided after the withdrawal of the militia, the government determined to put them within reach of such assistance and protection as being clothed with citizenship might afford and then leave them to work out their own destiny. To this end Senator Trumbull, on January 5, 1866, introduced a bill providing for the securing of civil rights to the freedmen as the first step in the direction of conferring upon them the rights of citizens. When this bill came up for discussion Senator Salisbury (Democrat), of Delaware, endeavored to have it so amended as to prohibit any extension of the suffrage, desiring, as he said, to test the sense of the Senate on the question of the right of Negroes to vote and contending that any measure conferring civil rights, carried the right to vote by implication. The measure passed the Senate February 2, by a vote of 33 to 12, and after some unimportant amendments, was taken up and passed by the House March 13, by an overwhelming majority. President Johnson vetoed it, but the measure was passed over his veto.[3]

The Apportionment Bill, which became Section 2 of the Fourteenth Amendment, as it came from the House, was not satisfactory to the more radical members of either branch of

3. See U. S. Laws, Thirty-ninth Congress, p. 316.

Congress. The radicals wanted a measure so sweeping and conclusive as to leave no room for judicial quibbling or construction. In opening the debate on it in the Senate on February 5, Mr. Sumner attacked the whole thing as a compromise and offered the following in support of which he made one of his exhaustive speeches of two days' length: "Whereas it is provided in the Constitution of the United States that the United States shall guarantee to every state in the Union a Republican form of government; and whereas by reason of the failure of certain states to maintain governments which Congress might recognize, it has become the duty of the United States standing in the place of guarantor where the principal has made a lapse, to secure to such states according to the requirements of the guarantee, governments Republican in form, and whereas it is further provided in a recent constitutional amendment that Congress may enforce the prohibition of slavery by appropriate legislation and it is important to this end that all relics of slavery should be removed, including all distinctive rights on account of color: Now therefore to carry out the guarantee of a Republican form of government and to enforce the prohibition of slavery, be it resolved by the Senate and the House of Representatives that there shall be no oligarchy, aristocracy, caste or monopoly invested with peculiar privileges and powers, and there shall be no denial of rights, civil or political, on account of color or race anywhere within the limits of the United States or the jurisdiction thereof, but all persons shall be equal before the law whether in the court room or at the ballot box. And this statute, made in pursuance of the Constitution shall be the supreme law of the land, anything in the constitutions or laws of any state to the contrary nothwithstanding." After this effort by Mr. Sumner, test votes were useless in determining where he stood on the suffrage question. Perhaps it would be too much to say that Mr. Sumner converted any of his colleagues by his speech, still it can hardly be doubted that his boldness and radicalism tended to stiffen the backbones of many. Mr. Henderson offered an amendment to the Sumner bill to the effect that there should

be no discrimination in political rights on account of color which was lost by a vote of 37 to 10. Mr. Sumner's whole proposition failed by a vote of 39 to 8, whereupon he sought to have passed a measure forever excluding from taxation any who might be disfranchised under the provisions of the original House bill for which his measure had been offered as a substitute, but his efforts in this direction were also without support. Mr. Sumner and his small coterie of colleagues were able, however, to defeat the main bill when the first vote was taken upon it by joining with the Democrats, the vote being 25 in favor of it to 22 against it; to adopt it required a two-thirds vote in the majority. On reconsidering the vote by which the measure was defeated, Senator Doolittle offered an amendment to the effect that after 1870 the apportionment should be made according to the number of male electors in each state over the age of 21 years, qualified by the laws of the state to choose members of the most numerous branch of Congress, etc. Some, like Senator Sherman, thought well of the proposition with the "1870" stricken out. At this time Negroes were denied the right to vote in nearly all of the states, and had the Sherman-Doolittle proposition carried it would have been necessary for the several states to have made specific provisions extending the franchise in order to have avoided the effect upon their representation. The consequences of this in the North, however, would not have been seriously felt immediately, as in many parts the colored people were not enumerated as a part of the basis of representation, while the South would have lost only the benefit of the constitutional three-fifths allowed for its slaves. At all events it was argued that the measure gave the several states a deliberate choice as to who should have the right of franchise; this was the main objection urged against the Conklin proposition as it came from the House. The radicals looked upon it as a step backward, inasmuch as each state already had the right to prescribe the qualifications of its voters and Negroes were recognized as neither qualified voters nor citizens. During the whole long debate on this Apportionment Bill, amendment after amendment was offered and a suf-

ficient number of germain propositions were welded together to form what subsequently was adopted as a Fourteenth Amendment to the Constitution.

Viewing this splendid amendment to the Constitution as it now stands, one can hardly imagine the chaos and confusion out of which it was evolved. There were propositions reflecting every shade of opinion and theory concerning reconstruction, from efforts to permanently disfranchise prominent rebels to efforts to enfranchise the freedmen; and it is doubtful whether any other part of the Constitution was ever so thoroughly debated before its adoption as the Fourteenth Amendment. Among the propositions in this connection that caused an extended debate in themselves, was a series of resolutions offered by Senator Stewart. These resolutions proposed to recognize the rebellious states as having fully and validly resumed their relations to the government when their constitutions should be so amended as to do away with all distinctions as to civil rights, etc., among the various classes of their people on account of race or color; second, to repudiate all pecuniary indebtedness which said states might have incurred or assumed in connection with the rebellion; third, to yield all claims to compensation for the liberation of the slaves; fourth, to provide for the extension of the elective franchise to all persons upon the same terms and conditions, making no discrimination on account of color, race, etc. The resolutions also set forth the fact that the states were respectfully requested to incorporate these provisions in their constitutions and denied any intention to coerce them in any manner, the matter being left to "the good sense and love of country" on the part of the southern people. Previous to this effusion, Senator Stewart had been going the furthest in his opposition to radical reconstruction and in putting forth his resolutions he said that he desired to make them conform to President Johnson's idea of reconstruction. That Senator Stewart, in this movement, reflected many of the ideas of Mr. Johnson can hardly be doubted. Aside from his numerous veto messages, Mr. Johnson gave voice to his opinion in regard to the situation in public speeches and letters to his

friends as will be shown by a letter written by him to Governor Sharkey, of Mississippi, under date of August 15, 1865. After expressing his gratification at seeing the organization of the convention called by Mr. Sharkey for the consideration of the matter of reconstruction in that state, the President said: "I hope you will amend your constitution abolishing slavery and denying to all future legislatures the power to legislate that there is property in man. * * * If you could extend the elective franchise to all persons of color who can read the Constitution of the United States in English and write their names, and to all persons of color who own real estate valued at not less than $250, and pay taxes thereon, you would completely disarm the adversary. * * * This you can do with perfect safety and thus place the southern states, with reference to free persons of color, on the same basis as the free states. I hope and trust you will do this, and, as a consequence, the radicals who are wild upon the Negro franchise, will be completely foiled."[4]

During President's Lincoln's time there had been so much talk about paying for the loss of slaves, etc., and, indeed, some actual progress made in that direction, that it was now determined to pass laws against making such payments in future and also specifically repudiating all debts incurred by the Confederacy on account of the war lest these obligations should be saddled upon the government as soon as the seceded states rejoined the Union. Under the Act of February 24, 1864, by which it was provided that slave owners who were loyal to the Union should be paid bounty money for such slaves as might be employed in the Union army, etc., commissions were appointed in Delaware and Maryland for the settlement of such claims. The Maryland Commission received 3867 such claims and awarded the sum of $250,750 to some 786 claimants, 25 of whom were paid a total of $6,900. The Delaware Commission awarded $11,853, on 43 claims, but nothing was ever paid to these claimants. Both commissions had since been dissolved; the Delaware Commission having been dissolved in July, 1865, and that for Maryland in October

4. Globe, First Session Thirty-ninth Congress, p. 1437.

of the same year. It was understood in some quarters or at least it was claimed by some, that in order to keep the border states in line with the Union, or at least neutral, President Lincoln had given them reason to believe that they should lose nothing on account of slavery, however the war might terminate. But whether there was any assurance given slave-holders of the border states to the effect that they should have pay for the loss of their slaves or not, it is true that some of them began to pass laws providing for payment for emancipated slaves soon after the Emancipation Act went into effect.[5]

Senator Trumbull's Civil Rights bill having been reported during the pendency of the Apportionment Bill, some of its main features were incorporated with the latter and passed as a part of the Fourteenth Amendment, which was adopted in the Senate by a vote of 31 to 11, on June 8, 1866; the House passed this important measure by a vote of 120 to 32 on June 13, 1866. The Amendment was duly enrolled and filed with the State Department on June 16 and on the same day Congress passed a resolution directing the President to transmit copies of the same to the Governors and legislatures of the several states for adoption by them, which they did in due course of time.[6]

Previous to the Civil War all colored people in the United States who were not regarded as property were regarded as pariahs. In the slave states they were considered as property. In the State of Pennsylvania, where to-day the laws are not only made but administered with as much fairness and impartiality as in any state in the Union, there may be found among its old statutes some laws as barbarous in their discriminations against Negroes as were ever passed by South Carolina.[7] So it appears that when Pennsylvania had slaves her people generally thought and acted like other slave-holders. And so it was with Mr. Johnson from the slave-holding state of

5. Laws of Maryland, March 10, 1864.
6. The Thirteenth Amendment was presented to and approved by President Lincoln, but this was neither necessary nor strictly in accordance with custom. The point was raised and settled by the Supreme Court in 1798. For full discussion of subject see Globe, First Session Thirty-ninth Congress, pp. 3198, etc. The Fourteenth Amendment was declared in force on July 28, 1868.
7. Pennsylvania Statutes at Large, 1712 to 1730, by Mitchell and Flanders.

Tennessee. Any legislation that even tended to destroy the meanest sort of discrimination between the white and colored people seemed to him to be not only outrageous but insane. The Trumbull Civil Rights bill was, in President Johnson's view, an anomaly; and after it was passed by Congress and was sent to him for approval he did not hesitate to veto it. After expressing his disapproval of the measure on the ground that it was an invasion of the rights of states as well as being discriminative as between colored Americans and foreigners, he said: "Yet it is now proposed by a single legislative enactment to confer the rights of citizenship upon all persons of African descent within the extended limits of the United States, while all persons of foreign birth who make our land their home must undergo a probation of five years and then can become citizens only on proof of their good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. The first section of the bill also contains an enumeration of the rights to be enjoyed by these classes of so made citizens in every state and territory of the United States. These rights are to make and enforce contracts, to sue and be parties to suits, and give evidence, to inherit, purchase, lease, sell, hold and convey property real and personal, and to have full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens; so, too, they are made subject to the same punishment and penalties in common with white citizens and to none others. Thus a perfect equality of the white and black races is attempted to be fixed by Federal law in every state of the Union over the vast field of state jurisdiction covered by these enumerated rights. In no one of these can a state exercise the power of discrimination between the different races. In exercising matters of state policy over matters exclusively affecting the people of such state it has frequently been thought expedient to discriminate between the two races." Thus Mr. Johnson, by the grace of an unhappy accident, President of the United States, expressed himself with frankness and innocent simplicity. When his

message was announced at the door of the Senate, Senator Wilson immediately moved an adjournment; and while the motion was not pressed, it was intended to be anything but complimentary to the President. On April 6, the Senate passed the measure over the President's veto, by a vote of 33 to 15, being something more than the requisite two-thirds majority. The House voted on it on April 9, when it was passed by that body by 122 to 41. And thus the Trumbull Civil Rights bill, the first of its kind, became law, the President's objections notwithstanding.

CHAPTER XVII

The Ku Klux Outrages—Re-enslavement of Freedmen Under the Black Codes—Discrimination in Courts of Law—The Colorado Constitution Attacked by Sumner—The Admission of Tennessee—The Admission of Nebraska.

There were trying times in the South for the freedmen during the years 1866-67. The fierce cruelty, always characteristic of slave-holders, which invested the southern whites with a sort of picturesque barbarity had been intensified by the recent conflict. There is no law but mob law under which men can ever be held as slaves. And while the mob in the South was no longer recognized as legal, still it remained supreme. Slave-holders for so long oppressed their victims with terror and were terrified by those whom they oppressed that they lost all notions of government except by terrorizing. The mob government of the late slave states having became illegal, the outside world first began to count those falling under its sway as victims of outrages in about 1867. Between the Ku Klux Klan and the Black Laws, the South was not only prepared to make emancipation appear to be a failure, but to show it up as the greatest crime in modern history. And so it would have been had Congress sat supinely by while the freedmen, turned out without a cent, were being sold into slavery for vagrancy under the Black Codes or were left to starve by the roadside if unable to work; and while young men, veterans returning with scars and wounds received in defense of the nation, were being pursued by night and by day and shot to death one by one. And all of this was happening after the passage of the Thirteenth and Fourteenth Amendments. The political party that was responsible for emancipation was compelled to go further in the direction of the completion of its work on penalty of being branded with infamy, and in doing this it was compelled to make auxiliaries of the freedmen. While it is doutbless true that men like

Sumner and Stevens, who championed the cause of the oppressed when the good of party was not a factor and when there was neither promise nor hope of reward other than the scorn and contumely of their colleagues, needed no compelling force other than their sense of duty, nevertheless it would have been practically impossible to have gotten through Congress such legislation as the Fourteenth Amendment and the Civil Rights Act, in the absence of such complications as before mentioned. As the outrages against the freedmen and their white friends in the South showed no abatement, no attention being paid to the ordinary laws or the decrees of Congress, the government, on January 8, 1866, decided to maintain a military force in that section until both Houses of Congress should decree that such was no longer necessary.

The organization known as the Ku Klux Klan represented the climax of anti-Negro sentiment on the part of the white people of the South. This powerful and well organized mob was but the outgrowth of older organizations formed for the purpose of creating and propagating pro-slavery sentiments and extending the influence of the slave power, in spite of Federal laws. And so the Ku Klux outrages, so full of ingenuity and replete with systematic method, did not spring from hastily devised or spontaneous combinations of ruffians who were offended because of the freedom and citizenship of the colored people, but were carefully planned and to some extent developed by these older organizations which coalesced and assumed a new name. It is said that the "Knights of the Golden Circle," "Knights of the Columbian Star" and even before these, the "Knights of the Lone Star," organized for the purpose of securing Cuba, Mexico and Central America, with a view to extending slavery, had, at the time of the war, extended their lodges, grips and passwords over all the South and a good portion of the northern states adjacent.[1]

A resolution was introduced in the House on January 8, 1866, by Mr. John A. Kasson, declaratory of the meaning of the Thirteenth and Fourteenth Amendments, and making it

1. American Conflict.

unlawful for colored people to be treated differently from any other citizens. In connection with this resolution, he had read from the desk, clippings taken from certain Maryland newspapers as follows: "The undersigned will offer for sale at the Court House door in the city of Annapolis, at 11 o'clock A. M. on Saturday, December 22, 1865, a Negro named John Johnson, age about 40 years. Said Negro was convicted at the October Term, 1865, of the Circuit Court of Arundel County, of larceny and sentenced to be sold. William Bryan, Sheriff." "Baltimore, December 24, four Negroes convicted of larceny and ordered to be sold by Judge Magruder, at Annapolis, were sold last Saturday."[2] The discrimination against Negroes by the courts in the South was then and still is notorious.[3] But to attempt to treat of or to follow up discrimination by courts against colored people would require many volumes and one would find himself wandering far from THE QUESTION BEFORE CONGRESS.

After the surrender of Lee, the Confederate soldier continued his open war against the freedmen with little or no abatement of ardor. Colored veterans of the Union army who returned home in search of their wives and children were especially selected as victims of this continued warfare; their knocks at the gate of their former owners were often responded to with a bullet; and the families of those who left the old homesteads were pursued, terrorized and often murdered. The following extract from the official report made to

2. Globe, First Session Thirty-ninth Congress, p. 345.

3. "When the Courts wherein we are practicing were opened in middle Georgia, after the war, it was idle to carry any case of a Negro before a jury of whites. We witnessed such an unbroken succession of adverse verdicts against colored litigants that, as Jefferson did over slavery, we trembled for our people when we reflected that God is just and that His justice would not forever sleep."—Reed's Practical Suggestions on Management of Law Suits, p. 66. "Comes Out of Jail After Twenty Years' Imprisonement"—Special to Philadelphia Inquirer, Atlanta, Ga., August 22, 1897—Twenty years ago a robust young colored man, named George Brown, was convicted in the Courts of Columbus for stealing a game rooster and was sentenced to twenty years in the penitentiary. To-day he is free again, but is old and gray and bent with infirmities. He has been to his old home in Muscogee County, and was there given a reception that dazed him. His daughter, whom he left a baby, has grown up and is married. He inquired for the pastor of his church and was told that he has been dead fourteen years. Others whom he asked for had been forgotten and there was no one to care for him, no one who even knew him. He talked about the war as though it was a recent event. He did not know who was President of the United States, and had never heard of McKinley. He asserts positively that he did not steal the chicken and he wanted to find the judge that sentenced him to tell him so, but the judge was dead." See also "The Silent South," by G. W. Cable (1895), pp. 19-20.

Congress on the subject and read before the Senate by Senator Wilson, February 15, 1867, will give some slight idea of the situation:[4] "From April, 1866, to December, 1866, the report showed as follows: In Virginia, murders 18, outrages 105; North Carolina, murders 15, outrages 86; South Carolina, murders 29, outrages 64; Georgia, murders 79, outrages not reported. There were also reported 34 murders in Mississippi, 19 in Kentucky and 84 in Texas." This report did not include the outrages committed in the latter states, nor, indeed, but a small percentage of the murders and outrages committed in the South during the short period which it undertook to cover.

Perhaps no word ever operated with more potent effect nor figured more prominently in the laws and statutes of any country than the word "white" in the constitutions and laws of the various states of the Union. This term was not inserted in these instruments in contemplation of the slaves who were held in subjection by force and not by law, but to affect the status of the free colored people so as to make their condition as nearly like that of the slaves as possible. In some of the states the complexion as a basis of the law was considerably spun out and refined; this was especially the case in Ohio, where all having not more than one-eighth Negro blood might vote. Generally, however, those known as having the least strain of Negro blood were classed as Negroes and the very name "Negro" was sufficient to exclude one from all rights and privileges or even protection under the laws of most of the states. Among the first demands made, therefore, by the radicals in Congress, upon the states seeking readmission to the Union, and heralded forth as a condition precedent, was one to the effect that state constitutions should recognize no discriminations based upon the color or race of the citizens. But notwithstanding this widely published fact, when the Territory of Colorado presented itself for admission as a state in April, 1866, its constitution was punctuated with this objectionable term from beginning to end; the word "white" seemed to have been used early and

4. Globe, Second Session, Thirty-ninth Congress, p. 1376.

often for the very purpose of emphasis. Senator Sumner and his radical colleagues opposed the measure with great vigor; all of them, however, did not base their opposition on the same ground as that of Sumner, who declared that the territory ought not to be allowed to come into the Union until its people should "recognize the Declaration of Independence;" some others based their opposition upon the ground that the territory was too sparsely settled. This was the second time the Colorado bill had been before the Senate, the matter having been laid aside the first time. The motion now was for the reconsideration of the motion by which the question had been laid aside, and, the Senate having agreed to reconsider it by a decided majority—there having been only 14 votes in the negative—Senator Sumner offered to amend the resolution for the admission of the territory as follows: "Provided, That this Act shall not take effect except upon the fundamental condition that within the state there shall be no denial of the elective franchise or any other rights on account of color or race, but all persons shall be equal before the law, and the people of the territory shall, by a majority of the voters therein, at such places and under such regulations as may be prescribed by the government thereof, declare their assent to this fundamental condition, and the Governor shall transmit to the President of the United States an authentic statement of such assent whenever the same shall have been given, upon receipt whereof, he shall by proclamation announce the fact; whereupon without any further proceedings on the part of Congress, this Act shall go into effect." When the yeas and nays were called for on this amendment only seven Senators voted in the affirmative while twenty-seven voted against it. There being no other amendment offered, the vote recurred on the main proposition as originally submitted and this was adopted by a vote of 19 to 13 on April 25, 1866. President Johnson vetoed the bill on the ground that the population of the territory did not warrant its admission, and there the matter rested for the time being.

On the 6th of March the Reconstruction Committee,

through Mr. Bingham, reported a bill for the readmission of Tennessee, which had adopted a constitution which seemed about as inconsistent with a Republican form of government as the Colorado constitution; though the preamble set forth that the state had adopted a constitution Republican in form, every section of the instrument intended to define the political or civil rights of the citizens commenced with the phrase "every white man," etc. It is true that the document pretended to exclude the "brigadier" generals of the Confederacy and also faintly argued for the disfranchisement of the "disloyal," still it blankly denied the right of franchise to every colored man.

The fact that this constitution was unsatisfactory to some of the Reconstruction Committee only tends to show that those who favored the immediate and unconditional extension of the franchise to the freedmen were in the minority; and if the extension of the suffrage was effected too early when it was extended, the persistent opposition in Congress on the part of those who objected to all legislation which was intended to give the freedmen reasonable protection against the atrocities then being perpetrated against them in the South, is responsible for it. Then, too, there was needed some assurance that the men sent as Representatives from the South would not be rank secessionists who would be inclined to join the "Copperheads" or those from the North who supported secession and thus effectually block reconstruction. The government of the southern states for the time being was, therefore, turned over to "Carpet-baggers," who, with the assistance of the freedmen proceeded to reconstruct the state governments.

The report of the Reconstruction Committee favoring the readmission of Tennessee with a constitution denying all rights to her colored citizens, was vigorously attacked by the radicals. Tennessee was the first of the seceded states to offer to return and there was a feeling of great satisfaction in the thought that Congress had at last struck upon a basis of reconstruction that might prove to be generally acceptable. While the matter was under consideration in the House Mr.

Stevens endeavored to have the seceded states compelled to adopt the Fourteenth Amendment as a condition precedent to their readmission, but his effort failed. When the matter was taken up by the Senate Committee it was at once favorably acted upon and reported to the Senate. In its report, the committee dwelt upon and, to many, seemed to magnify the loyalty of Tennessee, notwithstanding the restrictions mentioned in its constitution. .

The preamble of the resolutions so highly commending Tennessee for her loyalty was at once attacked by Senator Sumner for its falsity, as he viewed it. On the other hand, Senator Sherman was enthusiastic for the adoption of the whole matter as presented. Referring to Mr. Sumner's remarks, Mr. Sherman said: "I know my friend from Massachusetts (Mr. Sumner) and my friend from Missouri (Mr. Brown) do not think Tennessee will be in harmony with relation to the general government until she allows Negroes to vote. We come, then, to the bare and simple proposition that we must require these states to allow colored persons to vote. Are we prepared to make that issue?" "I am," retorted Mr. Brown. Mr. Sumner accomplished the defeat of the adoption of this preamble and promptly moved the following amendment to the measure as his answer to the challenge of Mr. Sherman: "Provided, That this (Act admitting this state) shall not take effect except upon the fundamental condition, that within the state there shall be no denial of the elective franchise or any other right on account of color or race, but all persons shall be equal before the law; and the legislature of the state by a solemn public act, shall declare the assent of the state to this fundamental condition, and shall transmit to the President of the United States an authentic copy of such assent whenever the same shall have been adopted, upon the prompt receipt whereof he shall, by proclamation, announce the fact, whereupon, without any further proceedings on the part of Congress, this joint resolution shall take effect." Only four voted for this proposition—Sumner, Brown, Pomeroy and Wade. And when the vote recurred on the main proposition to admit the state, there were only four votes in the

negative—Sumner, Brown, Pomeroy and Wade. The measure having been duly approved by the President, July 24, 1866, Tennessee once more became one of the states of the Union.

The Territory of Nebraska now applied for admission. Senator Wade had charge of the matter and in reply to a question by Senator Sumner as to her claims for being recognized as a state, said that there was nothing to which objection might be made except the clause in her constitution which restricted the elective franchise to white men. But, as in the case of Tennessee, the territory was admitted without being required to change her constitution in respect to the suffrage. Opposition to the measure in the House was about as feeble as that manifested by the Senate; there seemed to have been no decided disposition to fight and but little more to vote, the measure having been passed by a vote of 62 to 52. There was no great eagerness on the part of members to accept Senator Sherman's issue on the freedmen's right to vote at that particular time; they wanted to see which way the November elections were going before taking any decided stand.

The territories of Nebraska and Colorado were the last to be admitted into the Union carrying evidence in their fundamental law of discriminations directed in plain language against colored people. Soon after this time Congress passed a law applicable to all the territories in the Union, prohibiting any discrimination on account of color in the use of the elective franchise.[5]

5. Became law January 14, 1867 by lapse of time, the President having failed to sign it or to return it to Congress with his disapproval.

CHAPTER XVIII

Destitution Among Negroes Who Followed the Army to Washington—Bill for Their Relief—The Founding of Hillsdale, D. C.—Property and Funds in the Hands of the Freedmen's Bureau—Stevens' Proposition to Give Freedmen Heads of Families 40 Acres of Land—President Johnson Arraigns Congress—Congress Takes Official Notice of the President's Attitude—The Status of Seceded States in Elections of 1868—Party Platforms and Candidates—The Election of Grant—The Fifteenth Amendment and Its History—Sumner's Substitution for the Fifteenth Amendment—Sumner Attacked in Debates by Colleagues—His Defense of Himself.

During the winter of 1867-8 there was great suffering among the destitute colored people in the District of Columbia who had come from all parts of the South, following the Federal army until its arrival at Washington. When the army halted for the grand review many of the freedmen who had been following them became stranded and could go no further. Not only was the spectacle of this destitute horde of humanity at the national capital annoying, but the way they crowded themselves into old barracks, etc., for shelter, became a nuisance and a danger to the public health and morals. These poor freedmen were totally ignorant of both sanitary and hygienic laws; and, indeed, being piled upon the floors of half torn down buildings and old barracks, as they were, was scarcely regarded as a hardship by many who had often shivered on the damp dirt floors of the slave pen. Continuous life under such conditions in a city like Washington, however, could not be tolerated, and so the matter was speedily taken up by Congress, and a bill was introduced in the House on February 25, 1868, for their relief. General O. O. Howard had a large sum at his disposal through the Freedmen's Bureau, but it could not be used to give relief in this particular case, even had it been adequate, in view of the constant demands being made upon his appropriation to supply other thousands of white and colored people whom the war had left destitute in the South. The bill for relief in this case carried an appro-

priation of fifteen thousand dollars to be disbursed under the direction of General Howard, but with the understanding that those receiving help should render some service in return; in other words, the scheme was to give employment to the willing freedmen and large numbers of them were accordingly set to work on the streets and highways of the city. Commissaries and soup houses were established to supply food and better lodgings were secured.

Another happy scheme conceived by General Howard in this emergency was the founding of a colony of colored settlers. The Bureau had already come into possession of a large tract of land situated on the northern boundary of Washington, known as Smith's farm, where it had established Howard University. General Howard now acquired a large piece of land situated on the south side of the eastern branch of the Potomac for his colony and placed Captain James B. Johnson, a most rigid disciplinarian and a gentleman of singular business tact and ability, in charge of the laying out and development of the settlement, which was named Hillsdale. Mr. Johnson engaged some three hundred freedmen to do the work, but the contract under which they were employed stipulated that each man should apply a portion of his wages to the purchase of a homestead in the village upon which he had to construct a suitable dwelling. There was to be indulgence in neither drinking nor other unbecoming habits among the workmen or settlers on pain of being immediately dismissed. Mr. Johnson found it necessary to discharge many of his workmen under these Puritanic rules, but the ranks were quickly filled by others willing to submit to the test. By this sifting-out process the best material was secured for the colony and until this day much if not most of this property is in the hands of these settlers or their descendants. Some of these men became the best known truck farmers in the District of Columbia and at present Hillsdale is one of the most prosperous suburbs of Washington.

According to official reports made to the War Department in 1867, the Freedmen's Bureau had in its possession or under

its control 272,231 acres of land and 1119 pieces of city property, besides a balance of $282,383 of what was known as the Freedmen's Fund, consisting of back pay and unclaimed bounty money belonging to colored soldiers, etc. The most of the land had fallen into the hands of the Bureau on account of its having been abandoned by owners who had absconded during the war. Under the Homestead Act, passed in 1866, the government placed millions of acres of land at the disposal of the homeless and poor at a nominal price per acre, but the war had so prostrated affairs that many of the white people, even, were utterly powerless to come into possession of enough ground to establish farms of a reasonable size. As for the average Negro, the price of five dollars per acre put the property out of reach as effectually as though it had been fifty dollars.

Early in the spring of 1867, March 11, Mr. Stevens introduced a set of resolutions for the enforcement of the Confiscation Act of July 17, 1862, with preamble as follows: "Whereas it is due to justice, as an example to future times, that some proper pain should be inflicted on the people who constituted the 'Confederate States of America,' both because they declared an unjust war against the United States for the purpose of destroying republican liberty and permanently establish slavery, as well as for the cruel and barbarous manner in which they conducted said war, in violation of all rules of civilized warfare, and also to compel them to make compensation for the damage and expense caused by said war, therefore: Be it enacted that all public lands belonging to the ten states that formed the so-called 'Confederate States of America,' shall be forfeited by said states and become vested forthwith in the United States." The measure further provided as follows: Section 2, that the President should proceed at once to condemn the property forfeited under the aforesaid Act of July 17, 1862; section 3, that a commission of appraisers be appointed to appraise said property; section 4, that the land so seized and condemned should be distributed among the slaves who had been made free by the war and constitutional amendments, and who were resid-

ing on said land on the 4th of March, 1861, or since: to each head of a family 40 acres; to each adult male whether head of a family or not, 40 acres; to each widow, head of a family, 40 acres; to be held by them in fee simple, but to be inalienable for ten years after they should become so seized thereof. Section 5 provided for the raising of the sum of fifty dollars for each homesteader, to be used for the erection of a building on his homestead; and that the further sum of five hundred million dollars be raised for the purpose of pensioning the veterans of the Union army. The bill contained several other sections dealing with the subject in connection with the main features as above set forth.

Mr. Stevens called up this measure for consideration by the House on March 19, when he made one of his characteristic speeches, brilliant and pungent; age seems never to have had any effect upon his mental vigor nor any tendency to modify his sharp invectives. Said he: "I am about to discuss the question of pain of belligerent traitors.* * * The pain of traitors has been wholly ignored by a treacherous executive and a sluggish Congress. * * * I wish to makes an issue before the American people and see whether they will sanction the perfect impunity of a murderous belligerent and consent that loyal men of this nation who have been despoiled of their property shall remain without remuneration, either by rebel property of the property of the nation. To this issue I desire to devote the small remainder of my life. * * * No committee or party is responsible for this bill. Whatever merit it possesses is due to Andrew Johnson and myself." On the whole, this was one of Mr. Stevens' most eloquent efforts, though he delivered a great many speeches during his stirring and eventful career in the House and in public life generally. Mr. Stevens' blazing speech kindled such a fire that it formed the text for subsequent speeches by other members for some time afterwards as many members seemed anxious to get on record with a speech so that it might be known just how they stood in relation to the matter, apparently afraid to keep silent lest it might be said that they agreed with the "Old Commoner" as Mr. Stevens was called. This bill never

became a law, but it was not because Mr. Stevens did not "devote the small remainder of his life" to the issue. He was the father of the idea and the sponsor for the bill which faded and fell when its author died in 1868. But the idea of providing each freedman with forty acres of land, etc., was no hoax or ruse on the part of the Republican party to decoy the freedmen into that organization as they were told after the scheme had failed. And the discussion relative to the matter also touched on the feasibility of providing these freedmen with certain farming utensils and a mule or a horse.

The sarcastic allusion to President Johnson made by Mr. Stevens shows how continuously the breach between the executive and the legislative branches of the government widened until each department held the other in contempt. In his annual address, President Johnson arraigned Congress in the most bitter terms; he even went to the extent of characterizing the national legislature as a body of "deliberate Constitution violators." On several occasions he had advised the seceded states to disregard Congressional enactments which he claimed to have been passed by the usurpation of power, and did not hesitate to do what he could to cast odium upon Congress. Acrimonious thrusts at the President by members of Congress in their speeches had been frequent for a good many months before impeachment proceedings were formally begun when all seemed to have taken advantage of the occasion to vent their spleen. Mr. Johnson was a life long Democrat, and as one of the leaders of that party, had spoken and written much in derogation of the principles and professions of the Republicans. Old letters and documents calculated to detract from Mr. Johnson's popularity were dug up and used with telling effect in the debates; and weapons of this sort seemed only too abundant.

The House took its first notice of the hostile attitude of the President in the early part of the session, December 16, 1867, when Mr. John F. Benjamin introduced a resolution with a preamble setting forth among other things, the fact that the President had recommended the repeal of all the reconstruction laws passed by Congress and declaring that the House

"would not take one retrograde step from its advanced position in promoting the cause of equal rights, nor deviate from its fixed purpose of protecting all men as equals before the law." The resolution and preamble were adopted by a vote of 112 to 43. But even the ordeal of the impeachment trial, from which no one could hardly hope to emerge entirely undisgraced, did not cause Mr. Johnson to weaken in the least in his stern opposition to the course of Congress. Game to the last, he fought the Republican policy to the end of his term of office when he passed into an unvenviable obscurity. It may be doubted whether Mr. Johnson rightly deserved all the odium that has been heaped upon his memory. He was hated of the South, not because of his record as President during which time he certainly showed that section a rare devotion, but rather because it was felt that his loyalty to the Union was an unpardonable desertion of them in their crisis; he was hated of the North because they felt that he deserted the party that trusted his integrity and honored him with the opportunity through which he became President. But Mr. Johnson never pretended to be anything more than a southern Democrat who espoused the cause of the Union without going further. And this fact was generally known. He was assigned the part of villian in this tragic drama and, however important and well played his role, men are not inclined to give him their applause. The cohesion of the Republican party just after the cessation of hostilities, when the War Democrats were returning to their old ranks and thousands of others who, inclined to feel that the Republican party had fulfilled its mission, were about to loosen their allegiance, was due more to the powerful force of Andrew Johnson's opposition to the Republican administration of affairs than to any other cause. The struggle between Mr. Johnson and Congress convinced the people that the Republican party still had a mission.

The year 1868 was a presidential year, and the re-establishment of governments in the seceded states had just begun. In view of the approaching election, Congress passed a law depriving all the seceded states of a voice in the electoral col-

lege that might not have reorganized governments by the time prescribed by law for choosing electors. The Republicans nominated Grant and Colfax and the Democrats nominated Seymour and Blair. The issue between the parties had not been so clear and well defined since Lincoln was first nominated on a clean platform against the extension of slavery. The Republicans on the one side, declared that the functions of the states lately in rebellion were dead and could not be revived except by the action of the national government through which readmission had to be regularly sought. The Democrats on the other hand, claimed that these states were already in the Union and as such were entitled to all the prerogatives of states, that the ordinances of secession were anulled by the force of arms and the failure of the rebellion left everything as it had been before. The Republicans stood for equal suffrage, equal rights, and equal privileges of all before the law; the Democrats advocated the exclusion of the freedmen from all civil and political rights. So the party lines diverged about as widely as can be well imagined.

Mr. Blair, the Democratic candidate for Vice-President, so far allowed his partisan bitterness to override his judgment, as to state in a letter to a prominent member of the Democratic Convention, that in case of the election of their ticket, any policy devoted to the destruction of the governments set up in the South by the reconstructionists would have his unswerving support. He declared that since the large Republican majority in the Senate would forestall the possibility of destroying these governments through any legislative process, he was willing to appeal to arms for the accomplishment of his purpose. This letter caused the greatest excitement and was everywhere quoted throughout the campaign and used with great effect. Perhaps no letter was ever used on such an occasion with such potent effect, except, perhaps that written by Henry Clay when he was a candidate for the presidency.

The Republican party was overwhelmingly victorious at the November elections (1868), and when Congress met in December the Republicans, whose radical platform had been so thoroughly indorsed at the polls, were ready with many

propositions for the adoption of a Fifteenth Amendment to the Constitution. Among the first was Senator Sumner with a bill for the enforcement of the provisions of the Constitution abolishing slavery and declaring the immunity of citizens and guaranteeing a Republican form of government by securing the elective franchise to those deprived of the same by reason of race, etc. Another proposition submitted by Senator Henderson was in the following language: "No state shall deny or abridge the right of its citizens to vote and hold office on account of race, color or previous condition." This was amended in committee and reported substantially as it now stands in the Constitution, January 23, 1869. Simultaneously with this movement in the Senate Mr. George S. Boutwell introduced in the House a bill for the extension of the franchise and the enforcement of the Fourteenth Amendment, which was promptly passed by that body on January 30, 1869, but when it came up in the Senate, Mr. Stewart, under instructions from the Senate Judiciary Committee to which it had been referred, moved to strike out all after the enacting clause which was as follows: "The right of any citizen of the United States to vote shall not be denied or abridged by the United States or any state by reason of race, color or previous condition of servitude of any class of citizens of the United States. Congress shall have power to enforce," etc., and insert the following: "The right of the citizens of the United States to vote and hold office shall not be denied or abridged by the United States or any state on account of race, color or previous condition of servitude." Senator George H. Williams (Oregon) wanted some measure simply giving Congress the right to abolish or modify any law that might be made by any state in restriction of the suffrage of the citizens of the United States, fearing, as he said, that, notwithstanding precautions, some of the states might find a way to discriminate unjustly and the aggrieved would have no remedy. Senator Sumner, on the other hand, attacked the whole scheme looking to a constitutional amendment and declared that in view of the passage of the Thirteenth and Fourteenth Amendments to say that any state

could at any time make any law prohibiting or restricting the right of suffrage on any such account as the proposed Fifteenth Amendment contemplated, was a mockery: "Nothing more nor less than a recognition of the old State Rights' doctrine." He desired Congress to pass a simple Act based on these two amendments to take immediate effect. The Senate proposition as reported by Senator Stewart was adopted by that body by a vote of 39 to 16, but when the matter was taken up by the House it refused to concur, whereupon the Senate declined to consider further the House measure and resumed the consideration of the Henderson resolution which was under discussion in that chamber at the time the House resolution was received. The Senate forthwith adopted the Henderson resolution embodying the Fifteenth Amendment, February 17, and sent it to the House where it was amended on motion of Mr. Bingham by the insertion of the words "nativity, property or creed" after the words "on account of." The Senate having refused to concur in this change, the matter was sent to a conference committee which resulted in an agreement to report the measure framed as it now stands in the Constitution. The House adopted it on February 25 by a vote of 145 to 44, and it was adopted by the Senate on the next day by a vote of 39 to 13. None of the series of the war amendments has a more interesting history, perhaps, than that of the Fifteenth Amendment. The exigencies of the times showed the necessity for the adoption of some such measure, the people having unmistakably demanded such, as the result of the previous election demonstrated. But just what should be the scope and shape of the measure to be adopted was a matter of the gravest concern. The radicals, under the leadership of Mr. Sumner, wanted an Act that might bear immediate fruit in its tendency to suppress Ku Kluxism, etc.; the conservatives advocated a constitutional amendment in order to make the legislatures of the various states participate in the responsibility. In advocating the adoption of an Act as against a constitutional amendment, Mr. Sumner said: "The amendment admits that under the national Constitution as it is, with its recent additions, a caste and oligarchy of the skin

may be set up without any check from Congress; that these ignoble forms of inequality are consistent with Republican forms of government; and that the right to vote is not an existing privilege and right of citizenship. The hesitancy to present the amendment is increased when we consider the difficulties in the way of ratification. * * * I understand that nobody has yet been able to enumerate the states whose votes can be counted on to assure ratification within any reasonable time. In the meantime this question, which can not brook delay, which for the sake of peace and to complete reconstruction, should be settled at once, is handed over to prolonged controversy in the states. I need not depict the evils which might ensue. A state will become for the time, a political cauldron into which will be dropped all the poisoned ingredients of prejudice and hate, while a powerful political party, chanting like the witches in Macbeth:

'Double, double, toil and trouble,
Fire burn and cauldron bubble,'

will use this very amendment as the puddling stick to stir up the bubbling mass." Mr. Sumner quoted many decisions of the highest tribunals of the ancient and modern worlds, including even, the Dred Scott Decision by Taney, to show that the term citizen involved all the rights and immunities to be enjoyed by any and all persons claiming citizenship of a country. Speaking of the old interpretations of the Constitution, Mr. Sumner said: "State rights were exalted. Anything for slavery was constitutional. Vain are all our victories if this terrible rule is not reversed so that State Rights shall yield to Human Rights and the nation be exalted as the bulwark of all. This will be the crowning victory of the war. Beyond all question, the true rule under the national Constitution, especially since its additionel amendments, is that anything for Human Rights is Constitutional."

Referring to Mr. Sumner's construction of the Fourteenth Amendment, Senator Howe (Michigan) who served on the Joint Committee, observed that the idea of that measure

carrying with it the right to vote was not particularly discussed, whereupon Mr. Sumner denied the correctness of the statement with emphasis, and in reply to Mr. Howe, said: "The Senator is aware that his statement was denied at the time and the measure never could have passed the Senate had anybody attributed to it that meaning. The Senator knew well that as it came from the House it was susceptible of such an interpretation; and I felt it my duty to oppose it, which I did at great length and most elaborately, precisely on the ground that it did abandon to the states the power to discriminate against colored persons. I refused to support it and associating myself with others in that refusal, we defeated it."[1]

Mr. Sumner's substitute for the Fifteenth Amendment was as follows: "The right to vote, to be voted for and to hold office shall not be denied or abridged anywhere in the United States under any pretense of race or color, and all provisions in state constitutions or in any laws, state, territorial or municipal, inconsistent herewith are declared null and void." The other sections of the bill provided penalties for violation of the Act., etc., and gave the United States District Courts exclusive jurisdiction of all offenses against it.[2] Mr. Sumner's proposition was defeated by a vote of 47 to 9. While the Fifteenth Amendment was unsatisfactory to many, if not most, of the great leaders in Congress, none was criticized for opposing it as severely as Mr. Sumner. Whether this was because he was always the most conspicuous figure in all such movements or because he so often made his colleagues sore by his merciless attacks upon anything that seemed like sham or hypocrisy, may be left to conjecture. His colleagues, nevertheless, seemed always glad of an opportunity of charging him with anything that even seemed to appear inconsistent.

When the bill for the readmission of Virginia was under consideration in the early part of 1870 many seemed unusually anxious to have the state admitted in the hope that it might

1. See Appendix for interpretation of Supreme Court as to what Congress intended on this point.

2. See Appendix for construction of similar Act.

facilitate the adoption of the last constitutional amendments by the necessary three-fourths of the states. Senator Stewart was among those who were foremost in advocating the admission of the state, while Mr. Sumner maintained that law and order had not been sufficiently restored; and that as long as the lawless element remained in apparent control of affairs the state should not be readmitted. On January 12, 1870, a very lengthy memorial, purporting to have come from the loyal Republicans of Virginia and disclosing a very discouraging state of affairs, was handed to Mr. Sumner, who sent it to the Clerk's desk to be read. Among other things it stated that the memorialists had appealed to the Judiciary Committee of the Senate, but had not been heard; that a majority of the State Legislature of Virginia had been elected through fraud; that murder and outrages of every sort were being perpetrated upon the loyalists of the state because of their loyalty; that when arrests were made, which were not frequent, rebel juries would immediately acquit the guilty parties; that it was openly asserted in the canvass that the rebel party supported the expurgated constitution only for the sake of gaining admission to the Union, etc., etc. Upon hearing this memorial read Senators Stewart and Nye, and especially the former, very bitterly denounced the memorialists who, of course, were denfended by Senator Sumner. During the discussion that arose over the matter, Senator Stewart carefully selected disjointed paragraphs from Senator Sumner's speech on the Fifteenth Amendment before referred to, and cuttingly arraigned him for his course in connection with that measure. A couple of days before this, in the debate on the Virginia bill, Mr. Stewart asserted that Mr. Sumner did not vote for the Fifteenth Amendment; knowing how seldom he was absent and how he would have voted had he been present, Mr. Sumner corrected Senator Stewart's assertion as erroneous. It turned out, however, that Mr. Sumner was in error as he was absent when the final vote on the Fifteenth Amendment was taken. Mr. Trumbull also joined Mr. Stewart in a very severe attack on Mr. Sumner for opposing the admission of Virginia. In vindicating himself against these attacks

Mr. Sumner revealed much of the inside history of the whole reconstruction movement and told of many things that took place in committees of which no record is made. He recounted at length how Senator Trumbull had always opposed anti-slavery measures before the war and radical reconstruction afterwards; how he had championed the cause of President Johnson during the impeachment trial, etc., etc. In making a thorough search of the record in order to impeach the consistency of Mr. Sumner, it appeared that Mr. Trumbull had been able to find two important Republican measures for which Mr. Sumner had not voted, having been absent from his seat when the final vote was taken in each case; these were the Fifteenth Amendment and another measure passed earlier in the struggle known as the "Act to provide for more efficient government of the rebel states." In this address vindicating himself, Mr. Sumner, among other things said: "This assault to-day compels me to make a statement which I never supposed I should be called upon to make. I make it now with hesitation, but rather to show his (Trumbull's) own course rather than mine. Sir, I am the author of the provision in that Act conferring the suffrage, and when I brought it forward, the Senator from Illinois was one of my opponents; then as now. Senators who were there remember well that the whole subject was practically taken out of the Senate for the time, to a caucus of the Republican party where a committee was created to which all pending measures of reconstruction were referred. * * * The Senator from Ohio was chairman. In that committee the reconstruction bill was debated and matured word for word and sentence by sentence, and then and there I moved that we should require the suffrage of all persons without distinction of color in the organization of the new governments and in all the constitutions to be made. In taking this position at the time I was only following the proposition I had made in the Senate more than two years before, which I had urged upon the people in an elaborate address before a political convention in Massachusetts, which I again upheld in an elaborate address of two days in this chamber, and which from the very beginning I had never lost

sight of from my mind or heart. It was natural that I should press it in committee, but I was overruled, the Senator from Illinois opposing me with his accustomed determination. The chairman observed my discontent and said: 'You may renew your motion in the caucus.' I said I would do so, stating that I had been voted down in the committee, but would appeal from the committee to the caucus. My colleague (Mr. Wilson) who sits in front of me, shouted: 'Do so. The report of the committee will leave a great question open to debate on every square mile of the South. We must close the question up.' Another Senator, who is not here now, Mr. Gratz Brown, cried out earnestly, 'Push it to a vote, we will stand by you.' I needed no such encouragement for my determination was fixed. There sat the Senator from Illinois, sullen in his opposition. I pushed it to a vote and it was carried by two majority, Senators rising to be counted. My colleague, in his joy on that occasion, cried out: 'This is the greatest vote that has ever been taken on this Continent.' He felt, I felt, we all felt that the question of suffrage was secure. I am compelled to this statement by the assault of the Senator from Illinois. I had no disposition to make it. I don't claim anything for myself, I did only my duty. * * * The Senator read from the Globe the vote on the passage of the bill and exulted because my name was not there. Is there any Senator in this chamber who is absent from his seat less than I am? There was a reason for my absence on that occasion. I had left this chamber at midnight, fatigued, not well, knowing that the great cause was assured notwithstanding the opposition of the Senator from Illinois; knowing that at last, the right of the colored people to suffrage was recognized. I had seen it placed in the bill on my motion safe against the assaults of the Senator from Illinois. Why should I, fatigued and not well, stay until morning to swell the large and ascertained majority which it was destined to receive? I had no occasion to make up any such record. You know my fidelity to this cause. Reconstruction, even with the suffrage, was defective. More was needed. There should have been a system of free schools, greater protection to the freedmen, all of which I

sought in vain to obtain in committee. * * * Pained by the failure and feeling that there was nothing more for me to do, after midnight, I retired."

From the time of the Revolution down to about 1820, when the anti-slavery agitation received such impetus from the Missouri controversy, and was taken up by Garrison and his school of Abolitionists, free colored people were allowed to vote in many states of the North as well as in several of the southern states.[3] Many of the northern states, in the constitutions which they adopted just after the Revolution, took no notice of the colored people at all, but simply made provision for their citizens generally, as was done, for instance, in the State of Pennsylvania. But between 1820 and 1850 nearly all of the states formulated new constitutions with specific provisions excluding Negroes from the right to exercise the right of suffrage in obedience to the demands of the South.

---

3. See opinion of Gaston, J., in State vs. Manuel 4 Dev. & Bat. 20 (N. C. Supreme Court), also Mr. Justice Curtis' dissenting opinion in Dred Scott case; also speech of W. J. Willey, Globe, June 27, 1866; also Giddings, p. 69.

CHAPTER XIX

Negroes in Politics—Anti-Negro Election Riots—The Admission of Alabama and Arkansas—The Omnibus Bill—Outrages of Ku Kluxism Investigated—The Adoption of the Fifteenth Amendment a Condition Precedent for Admission of Other States—The Virginia Bill—Admission of State—The Admission of Mississippi—Revels, the First Negro Senator, Seated.

By the Fifteenth Amendment the right of suffrage was conferred upon the freedmen in language so clear that no construction by any court was needed. Epoch-making events had moved rapidly. History may somewhere record where a people had risen up and seized their rights and at once entered upon the enjoyment of them, but nowhere do we find where so many privileges have been conferred all of a sudden and practically without warning as in the case of the freedmen in the United States. Between 1859 and 1869 the colored people of the United States were swept through social changes and experiences, the wilderness that lies between the Egypt of slavery and the Promised Land of full citizenship, that generally detain the pilgrims of a race for generations. But as the Negroes had been summoned as allies by those who were struggling to save the Union on the field of battle, so it became necessary to arm them with the ballot in order to obtain their aid in the struggle to reconstruct the laws of the nation on the floor of Congress. And they were immediately put into harness, as it were, where they have ever since played an important part in American politics, and where their influence began to be actively felt in 1868. On February 25, 1868, Congress passed an act to provide for the facilitation of the adoption of state constitutions where such had been annulled, which Act was in the nature of a supplement to the General Enabling Act of March 2, 1867. It provided that all persons in a state duly registered as voters ten days before election day should be permitted to vote in the district wherein they might reside.

Under this Act, the so-called loyal people in the disaffected states, many of whom were necessarily "Carpet-baggers," began to formulate constitutions. Although there had been for some months previous a general movement in the South apparently in the direction of returning to the Union, it was heavy and slow and gave every evidence of the hard strain under which the people were laboring. Everything had been done under pressure of the national government and wherever this pressure was removed or even lightened, matters at once got out of adjustment. The people of Alabama, having held a convention, formed a constitution which was submitted to the voters for ratification in February, 1868. Just previous to this time many of the troops stationed in that section to preserve order had been removed, and as a result, those opposed to the adoption of the new constitution took forcible possession of the polls and drove the reconstructionists away without allowing them to vote. The convention that formed the constitution met in the previous August and was composed of radical Republicans, but the majority of the electors depended upon to support the measure when it came to be voted upon were freedmen who were more or less easily intimidated by the threats or scowls of their late masters. Nor were there merely meaningless threats as the following extracts from reports received from officials of that region will tend to show.[1] "Union men of this county will have to leave, * * * mob law prevails. Freedmen are discharged from employment and driven to the woods because they voted for the constitution. Organizations are formed to drive the Union men from the county. Children are proscribed from the schools." Another official reported as follows: "Voters were told that if they voted for the constitution they would be driven away; * * * all the votes cast have been by men of unusual nerve in the face of the most menacing violence." The constitution of the state had been, indeed, radically reconstructed by that convention. It was the ideal Republican brand and such as would take with only the truly reconstruct-

1. Globe, Second Session Fortieth Congress, p. 598, etc., presented by Congressman Peters.

ed southerner and it is fair to presume that it was all that even *he* could conscientiously swallow. Before being allowed to register each voter was required to take an oath to support the Constitution of the United States and the laws of Alabama, to abrogate the rights of secession, to accept the civil and political equality of all men and never endeavor to deprive any person of any civil right, privilege or immunity on account of color or race or previous condition of servitude. The war was now three years past and as long as any state was out of the Union the whole country must necessarily remain in an unsettled condition. But the opposing element was plainly working to keep things in this condition until they could be adjusted on a basis of their own fixing. The Act under which reconstruction was being developed passed March 2, 1867, provided for the calling of conventions to formulate constitutions which were to be ratified by a majority of the votes of the qualified electors. The registration lists were used as a basis upon which to determine this majority. All made it a point to register and qualify, but when the election came off the opposition party, in order to make the returns show that the result was not the action of the majority of the qualified electors, would neither vote themselves nor allow others to vote. The Reconstruction Committee to which the proposition to admit the state was referred, reported that the state should be entitled to admission on condition that the "constitution of Alabama shall never be changed or amended so as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution hereby recognized." The committee further bound them to all the radical provisions of their compact. There is no doubt whatever that all the states might have come in under conditions as easy and as simple as those imposed upon Tennessee whose reconstructed constitution so sharply discriminated against the colored people had not the stubborn disposition of the southern whites forced upon Congress the necessity of placing the political power of that section into the hands of the freedmen and "Carpet-baggers" who virtually dragged the states back into the Union. By the shrewd-

ness of the Democrats and the stupidity of the Senate, as Mr. Stevens characterized it, the admission of Alabama at this time was defeated because it was shown that a majority of the qualified voters had not ratified its new constitution. Mr. Stevens, in the first place, urged upon Congress the necessity of admitting the states upon the ratification of their constitutions by a majority of the votes cast instead of requiring ratification by a majority of the qualified voters. The Alabama constitution, therefore, was recognized as provisional only and as such was allowed to go into temporary operation and the legislature elected thereunder was authorized, when it might see fit, to resubmit it to the people. But there happened to be no great loss or setback in the matter because the state was admitted a short while later under the provisions of the Omnibus Bill.

In the latter part of 1868 Arkansas called a convention and formulated a constitution for submission to her people. This constitution was about as drastic in its requirements as that of Alabama just referred to; in fact it was practically a replica of the latter. The document was fiercely attacked by the Democrats in Congress. It was contended that such humiliating conditions should not be imposed upon a state seeking admission, that the specifications in the test oath were utterly at variance, not only with the teaching and practices of the white people of America but with the civilized world; in short the same arguments were used that have been employed in matters of this kind since Pickney pleaded for the rentention of slavery in the colonies. The people of Arkansas ratified this constitution, however, by a majority of about thirteen hundred and it is said that the majority would have been much larger had it not been for the fact that the voters were required to reside in their districts for too long a time before being allowed to register. The election to ratify or reject the constitution took place about the middle of March, 1868, and the bill for admission of the state came up on May 8, when the Reconstruction Committee which reported it had added a clause to the effect that "this constitution shall never be so changed or amended as to deprive any citizen or class of citi-

zens of the right to vote who are entitled to vote under the constitution herein recognized." The whole matter was attacked when it came up in the Senate, on the ground that inasmuch as the state had adopted a constitution Republican in form and the whole proceedings had taken place under the General Enabling Act of March 2, 1867, all that was necessary had been done, and so Senator Terry (Connecticut) moved to strike out all conditions precedent so as to provide simply for the admission of the state on equal terms with the other states. This motion was defeated by only one vote—20 yeas to 21 nays. Senator Drake (Missouri) offered an amendment to the effect that "there should never be any denial of the free exercise of the elective franchise on account of race, color, etc., which was agreed to by a vote of 26 to 14, and the Senate passed the bill practically in this shape on June 1. The House refused to concur in the Senate amendments and the matter was referred to a conference committee which reported the measure back essentially as it came from the House originally with the addition of a clause permitting the state to change the time and place as to residence of voters. Both Houses adopted the report and under such a constitution Arkansas was taken back into the Union.

From time to time resolutions were offered providing for the admission of some state all of which were referred to the Reconstruction Committee for report. About the middle of May the committee reported a bill known as the "Omnibus Bill," for the admission of North Carolina, South Carolina, Georgia and Louisiana. The preamble set forth that these states had adopted constitutions Republican in form and were, therefore, entitled to admission, etc. These constitutions were all essentially the same as the Arkansas compact. The bill met with the usual opposition on the part of the Democrats, who declared that Congress was assuming undelegated power and the action was unconstitutional; the attack upon the test oath was particularly acrimonious. The committee had placed in the bill a clause against changing or amending the constitutions like that which the original Arkansas bill carried; Judge Bingham moved to strike this out on the ground that it

perpetuated the conditions of franchise as they then stood, and it might at some time become expedient for the public good to change them. He offered as a substitute for that clause the following: "That civil and political rights shall be forever equally secured in said states to all the citizens of the United States resident therein, in so far as is now provided in said constitutions respectively." The House accepted this amendment after having made some slight but unimportant modifications. Perhaps no one step in the whole process of reconstruction was more bitterly contested than this bill which proposed to admit these states under such stringent conditions. The whole arsenal of Democratic invectives was turned loose in a raging fusilade against the Republicans and the Negroes. Thaddeus Stevens closed the debate in the House with a short, pungent speech. Referring to the remarks of Mr. Brooks (New York) reflecting upon the idea of allowing the freedmen to participate in the government, Mr. Stevens said: "I trust that the gentleman will find out that we do mean that every man in this Republic whether he be white or black or mixed; whether he comes from the East or from the West; from the North or from the South; from the rising or from the setting sun, is as free and as much his own master as the gentleman from New York or myself. And I am sure there is no one who is not as worthy to be as either of us. Let it never again be heard in these Halls that objection is made to institutions because they allow beings, allow all beings with mortal souls in their bodies, to take part in the government under which they are to serve, under which they are to live, under which they are to rear their children and under which they are to die. I, therefore, say I have no apology to make for the admission that we intend that these men shall have the right to compete in intellect, in science and in religion with the gentleman from New York and his constituents of the 'Five Points';[2] with myself and the honest yeomanry who are my constituents, and with all the people of the nation. And let him who is the most worthy, who

2. The "Five Points" is the name applied to a section of New York City noted for its poor and wretched denizens, as well as for degraded and tough characters generally.

climbs the highest upon the ladder of merit, of science, of intellect, of morality—let him be ruler according to the law, of all his sluggard neighbors, no matter who they are, whether they be men of nobility or whether they be of the common rank." The bill passed with the usual Republican majority. When the measure reached the Senate it was proposed that the title of the bill be so amended as to include Alabama. Senator Trumbull and some others opposed the amendment on the ground that it would be improper in view of the fact that the returns in the constitutional election had shown that a majority of the electors had not voted. It will be remembered that this was the objection raised in the House when the state was first a candidate for admission and resulted in having the government of the state recognized as provisional only. Senator Trumbull's objection did not prevail. When the vote on the bill was taken, June 10, its title was again amended so as to include Florida. The House later concurred in all these amendments as to adding names of states and thus the whole combination was received back into the Union under the stringent conditions named.

President Johnson returned the bill admitting Arkansas with his veto on June 20. In his veto message he took the same ground that he was accustomed to take on all reconstruction legislation by Congress. To begin with, he denied the constitutionality of the Act of March 2, 1867, under which all the states were required to seek admission. He especially attacked the "fundamental condition clause" and the "test oath." But both Congress and the President now seemed to understand each other. The message, therefore, caused neither surprise nor comment. The same quiet air prevailed in the Senate as in the House when the President's message was laid before them, when the Speaker simply said: "The question is, will the House, on reconsideration, agree to the passage of the bill;" the vote was 111 to 31. The Senate, on the same day, passed the bill by a vote of 30 to 7, and the President's veto was accordingly overriden. Three days later the Omnibus Bill was returned by the President without his signature, and this, too, was passed and became

law by virtue of a two-thirds majority in both Houses. By the middle of July (1868) most of the seceded states had formulated constitutions in accordance with the requirements of the law. Virginia, Mississippi and Texas, however, still remained with provisional governments while mobocracy and Ku Kluxism held sway. There seems to have been such little inclination on the part of these states to be reconstructed that Congress deemed it necessary to enact legislation for their especial benefit. On July 24, Mr. Bingham reported a bill providing for the "speedy restoration" of these states.

The main features of the bill intended to enlarge the powers vested in the provisional legislatures, giving the power to appoint and dismiss certain officers; to make regulations for the peace and protection of the community, and to exercise powers as nearly like those of a regularly constituted government as possible. The bill further provided for the reassembling of the conventions in Virginia and Mississippi on the fourth Wednesday after its passage; and that the convention of Mississippi should at once formulate a constitution to be submitted to the people for ratification or rejection. It appeared that the state had made no effort in that direction whatever. Some of the states seemed determined to go no faster nor further in the direction of readjusting their relations to the nation than they were compelled to go. Some formed constitutions but delayed in submitting them to be voted on, etc. So on April 8, 1869, Congress passed an Act authorizing the President to order these constitutions to be voted on by the people whenever it might seem to the best interest of the government; this measure also made the adoption of the Fifteenth Amendment a condition precedent before these states could come back into the Union. The shocking barbarities and depredations by the Ku Klux having continued unabated when the Third Session of the Fortieth Congress assembled, December 7, 1868, Mr. James A. Mullins (Tennessee) brought the matter to the attention of the House and secured the appointment of a committee to investigate the whole subject of these outrages. The camps, lodges, grips, signs and passwords discovered, revealed the most stupend-

ous scheme to override law and order ever brought to light in this country. The report of this committee fills many volumes.

In President Grant's first message, in December, 1869, he informed Congress that Virginia had held a convention and adopted a reconstructed constitution during the previous July and recommended that her Senators and Representatives when otherwise qualified, be given their seats in the national councils. A resolution was straightway offered for the admission of the state, but owing to the numerous amendments proposed, a lengthy and bitter debate ensued. Senator Wilson wanted to have an oath attached to be subscribed by members of the legislature binding them never to endeavor to change or amend the constitution of the state so as to deprive any citizen of the benefits of the Fourteenth and Fifteenth Amendments; also pledging them to an impartial administration of the free school system. Impetus was given to the movement for the Wilson amendment by reports to the effect that a majority of the Virginia Legislature had been elected through fraud and that the state was seeking admission for the avowed purpose of gaining a position wherein it could more effectually oppose reconstruction. Senator Wilson's amendment did not prevail but a proposition by Senator Drake (Missouri) of a very similar nature was accepted by the Senate which also adopted that part of Senator Wilson's proposition for an equitable administration of the free school system. In this shape the Virginia bill passed the Senate, January 21, 1870, and was taken up and passed by the House a few days later without modification. The bill for the admission of Mississippi, essentially the same as the Virginia bill, passed the House February 3, 1870, without debate. When it came up in the Senate, about a week later, on the report of the Senate Judiciary Committee, it was proposed to strike out all after the enacting clause so that the bill would simply provide for the admission of the state. It appeared that when the constitution was voted upon by the people, that part of the matter which referred to the acceptance of the equality of all men, etc., was rejected by a

large majority. It was urged by Senator Trumbull, who was an ultra-conservative, that it would be unfair to compel the state to remain out of the Union on account of such provisions in the bill as had been rejected by the people at the polls; strenuous efforts were made, therefore, to defeat the measure as it came from the House. It was debated *ad nauseam* only to be passed without modification as it came from the House on February 17. About this time the Senate received a rather unusual shock. Hiram R. Revels, the first Negro ever seated in the United States Senate was sworn in on February 25, 1870. This event fairly took the breath away from the Bourbons, prostrated the Copperheads and galled, not a little, many others. It gave occasion for renewed and, if possible, more acrimonious aspersions upon the race which Mr. Revels represented. Some seemed to have lost their self-respect altogether so freely were personalities and puny insults indulged. Mr. Revels survived them all and calmly took his seat in the historic chamber that had resounded with the eloquence of the Websters and Clays of the nation and where even then sat some of the greatest minds the republic has ever produced. Mississippi has since had one other colored Senator, Hon. B. K. Bruce, who also held other high offices of public trust, among them being that of Register of the Treasury and Recorder of Deeds for the District of Columbia. Under her present constitution, however, Mississippi is no longer in danger of having colored men to represent her in any capacity, for despite the circumstances and the compact under which she was readmitted to the Union, she has practically disfranchised all of her colored citizens; and all the other southern states have done the same. And so we make new history but can not unmake that which is already made.

CHAPTER XX

Colored Men Elected to the Georgia Legislature: Their Expulsion From that Body—The Confused Condition and Anomalous Situation in the State—Ratification of the Fifteenth Amendment Announced—Georgia Again Recognized as a State, All Irregularities Being Waived.

The State of Georgia was one of those admitted under the Omnibus Bill in July, 1868, after a bitter contest. Although Tennessee furnished a precedent by promptly reorganizing her government under the provisions of the General Enabling Act of March 2, 1867, all hope of keeping the disaffected states out of the Union until Congress should be forced to recognize the doctrine that the functions of their old constitutions had not been destroyed but simply suspended, making it necessary for them only to resume, was not abandoned until after the passage of the Omnibus Bill, at which time a large batch of states was admitted at once. This was a great victory for the radical reconstructionists; and this in connection with the announcement of the adoption of the Fourteenth Amendment, July 21, 1868, by the requisite number of states tended to make all feel that the crisis in reconstruction had been passed.

Georgia, as soon as she was admitted, began at once to take steps to resume her relations to the Union by electing a legislature preparatory to the election of her United States Senators, etc. A number of colored men were elected to the State Assembly along with the rest, but that body expelled them as soon as it met, on the ground that the right to vote did not include the right to hold office. This short task of expelling these twenty-seven colored members having been accomplished, the Assembly next quietly proceeded to elect United States Senators, who immediately repaired to Washington. Congress refused to recognize either the Senators or Representatives from Georgia in view of the well-known situation of affairs in the state. General Butler offered a

resolution proposing to put the state through another course of reconstruction; this gave rise to a discussion, during which all the circumstances attending the expulsion of the twenty-seven members of the Georgia Legislature were aired. There appears to have been no particular ceremony about the matter whatever; they were simply not permitted to enter the Hall, while the white members on the inside voted to keep them outside by deciding that they were not members entitled to seats. The whole thing must have been looked on as a joke, as nothing ever came out of it beyond the temporary embarrassment Congress inflicted upon the National Representatives from Georgia who were for a short time denied their seats at Washington. This Georgia Legislature not only expelled its twenty-seven colored members but seated twenty-seven white men who were disqualified under Section 3, of the Fourteenth Amendment. Still the state had its champions in Washington. Senator Trumbull labored to get his colleagues to agree to admit the members from Georgia to their seats because the state had been admitted before these complications arose. The House finally passed a bill providing for the recognition of the Representatives, etc., from Georgia whenever, among other things, the legislature should adopt the Fifteenth Amendment; but Mr. Bingham got an amendment attached to the effect that nothing in the Act should be construed to vacate any office, elective or appointive, nor should anything contained therein be construed to operate for the retention of any persons in office beyond the time specified by the state constitution. In view of the fact that many were said to be holding office in the state through fraud, this amendment was not satisfactory; besides it served to muddle and complicate matters worse than they were at first, for this Legislature of Georgia promptly adopted all the constitutional amendments, even including the Fifteenth, all of which they appeared to have violated in the same instant. The situation was therefore considered to be bad enough without dragging in the question as to whether state officials and petty officers elected in 1868 for a term of two years should continue for two years after all the affairs of

the state should become settled or whether their term of office should date from the time they went in office in 1868. All these officials had been nominally serving and at least drawing their salaries since 1868; and these included those who had voted to expel the colored men as well as the rest. All had served their two years. Still they claimed the right to serve on until these affairs were settled and then to serve for two years thereafter. Mr. Bullock, who was the Governor of the state, most strenuously upheld the contention that the legislature should serve another term of two years without another election. The House loaded the Bingham proposition with so many amendments and conditions that it was scarcely recognizable. When the matter was taken up in the Senate, Mr. Pomeroy had everything stricken out of the bill except that part providing for the government of the state to be provisional, and had inserted provisions authorizing the President to send Federal troops into any city, town, or district when satisfied that there was within its borders domestic violence or obstructions to the due process of law. This Senate measure was reported back from the House Reconstruction Committee, with some few alterations, on June 23 (1870) but the members were still so puzzled over the matter that there was little agreement to be found either in the committee or on the floor of the House. The matter hung on for an unusually long time. Finally, the two Houses having failed to agree, the matter was referred to a conference which at length matured a bill under which the Representatives of the state were recognized and there the matter ended, all the irregularities having been ignored or condoned, as everybody had been either disgusted or worn out with the controversy.

Public feeling in the South against the colored people continued to be very bitter. A bill was reported by Mr. Bingham on March 10, 1870, for the enforcement of the Fourteenth and Fifteenth Amendments and providing penalties for the violation of the same. This was readily passed by the House by a vote of 131 to 44. In the meantime the Senate was considering what was considered to be a much stronger measure,

which provided for the arrest and prosecution of offenders against the spirit of the last two amendments mentioned, by United States district attorneys, marshals, etc., who were directed to bring such offenders before the United States Circuit Courts for trial. The President was also given the power, whenever he deemed it necessary, to order special sittings of said courts and also to direct the use of any part of the army or navy to assist in seeing that the provisions of the law were carried out. The bill also re-enacted the main features of the Civil Rights and Homestead Acts of 1866. When the House Bill reached the Senate, that body struck out all after the enacting clause and inserted its own measure, which it passed by a vote of 43 to 8 on May 20 (1870). The House accepted this measure and passed it May 27, and the President approved it May 31.[1] Just before the final passage of this measure, President Grant transmitted to Congress the following message: "It is unusual to notify the two Houses of Congress, by message, of the promulgation by proclamation of the Secretary of State, of the ratification of a constitutional amendment. In view, however, of the vast importance of the Fifteenth Amendment to the Constitution, I deem a departure from the usual custom justifiable. A measure which makes at once four millions of people voters who were heretofore declared by the highest tribunal in the land not citizens of the United States nor eligible to become so (with the assertion that 'at the time of the Declaration of Independence the opinion was fixed and universal in the civilized portion of the white race, and regarded as an axiom in morals as well as politics, that the black man had no rights which the white man was bound to respect') is, indeed, a measure of grander importance than any other one act of the kind from the foundation of our government to the present day. Institutions like ours, in which all powers are derived directly from the people, must mainly depend upon their intelligence, patriotism and industry. I call the attention, therefore, of the newly enfranchised race to the importance of their striving in every honorable manner

1. Declared unconstitutional. See Appendix.

to make themselves worthy of their new privileges. To the other race, more favored heretofore by our laws, I would say, withhold no legal privilege of advancement to the new citizens. I would therefore call upon Congress to take all means within their constitutional powers to promote and encourage popular education throughout the country; and upon the people, everywhere, to see to it that all who possess and exercise political rights, shall have the opportunity to acquire the knowledge which shall make their share in the government a blessing and not a danger. By such means only can the benefits contemplated by this amendment be secured."

It was during the discussion of the Georgia bill that Hiram R. Revels, the first Negro Senator, delivered his maiden speech in the Senate (March 16, 1870). It was not a lengthy effort but it was smooth and polished. In complimenting Mr. Revels on his speech, Senator Morton, addressing the Senate, said that Mr. Revels had vindicated the cause of liberty and shown by his ability and intelligence, that in exchanging him for Jefferson Davis, the Senate had "lost nothing in intelligence while it had gained much in patriotism and loyalty."[2]

2. Revels was elected to fill the unexpired term of Jefferson Davis.

CHAPTER XXI

The Grant-Sumner Quarrel Over the Annexation of San Domingo—Senator Thurman's Speech in Sumner's Defense—Sumner Victorious, but His Colleagues Attempt to Humiliate Him.

One of the most bitter quarrels that ever occurred between a President of the United States and a Senator of the same political party was the noted disagreement between President Grant and Senator Sumner about the island of San Domingo. One Baez, who had temporarily usurped the control of affairs in San Domingo, offered the island for annexation to the United States. The place is fertile, well suited to the purposes of commerce and most admirably situated for a harbor and coaling station for the United States. Grant coveted the possession and believed that practically all the leaders of his party would indorse his scheme of trying to get hold of it, and devoted by far the major portion of his annual message of December, 1870, to the enforcement of the idea upon Congress. Mr. Sumner opposed the proposition with his whole soul. He declared that it menaced the independence of Hayti; that the Dominican Government had been overthrown under the protection of the United States gunboats, and asserted on the authority of a naval officer who had been an eye-witness, that the admiral of our fleet had given Hayti to understand that no interference on the part of her people would be tolerated or allowed. He declared that we were aiming to take despicable advantage of the people of San Domingo, who, by a large majority, were opposed to annexation and characterized the whole affair as an "act of violence" on our part to which the Dominicans would never submit and declared that the consummation of the scheme would "commit this country to a dance of blood." "Governments founded on violence," said he, "can be maintained only by violence." Mr. Sumner's speech was against the proposition and not against the President; but President Grant was popular and had just entered

upon his power as President and it was practically well known at the time that he would serve for eight years; opposition to him in any matter, in the eyes of politicians was regarded, if not as treason, at least as lese majesty. Never was a member of Congress more bitterly assailed by his colleagues for his support of or opposition to any question on the floor of Congress than was Senator Sumner on this occasion. Nor did the assault come from the Democrats, the acknowledged enemy whom he was wont to meet. Former comrades with whom he had so often counseled together hurled against him their darts of reproach and denounced him in the bitterest language of which they were capable. All seemed to try to be first in defense of the President, who was the central figure, and generally lost sight of the issue entirely in their eagerness to make a personal attack upon Sumner for daring to show up Grant and those in league with him in their endeavor to seize San Domingo. Indeed, it appeared that Sumner had made out such a good case that they despaired of answering his argument, hence turned to personalities, as many debaters often do under such circumstances. Sumner's speech was sweeping and conclusive. Several of his Republican colleagues had spent their time berating him, when Thurman, a Democratic Senator from Ohio, arose to speak in Sumner's defense. He was evidently deeply touched by the acrimonious attack upon his old antagonist who, though recognized as perhaps the most learned and powerful debater in Congress, never descended to personalities of any kind. The tribute now to be paid to him was all the more touching and effective because of the source from which it was to come. Mr. Thurman remarked that a stranger witnessing the scene would certainly have gained the impression that the Senate was impeaching Mr. Sumner for treason. Said he "The Senator from Michigan (Mr. Chandler) was pleased to tell the Senator from Massachusetts that when he came 'to train his little band of Democrats' here it would not be a very difficult task; that there were not so many but that he might dress them in line without any great military genius.

"When the Senator made that remark my memory took me

back eighteen years ago to the memorable year of 1852. That was a presidential year. There were two candidates, the Whig, General Scott, and the Democratic, General Franklin Pierce. They stood upon two platforms that were essentially the same in one particular—pro-slavery; platforms that demanded in almost the same language and exactly the same meaning, a cessation of the agitation of the question of slavery and against the abolition thereof; which denounced it as unpatriotic in any part of the Republic for any one to seek to disturb the status of slavery as it then existed in the United States. Upon those platforms, the two great parties of the country went to battle in 1852; but there was one man in the Senate that day, and but one, who repudiated both platforms and would stand on neither, who repudiated both candidates and would vote for neither; and that man was Charles Sumner.[1] I see him standing in the Senate Chamber there without a single follower. He had no ten men then, the number of Democrats here, 'to dress in line;' nobody but himself. I have lived to see the day when sixty Republican Senators, the Senator from Michigan among them, followed in his footsteps with the most implicit obedience. I have seen that which I never expected to see; I have seen the man who repudiated your candidate in 1852, who spat upon your platform, at the head of your councils for nearly ten years in the United States Senate. Where, then, were you who now talk about nothing but freedom? Where, then, were you who boast about the enfranchisement of the African race? Where, then, were you who are now so ready to denounce a man who stands up for the institutions of his country? Where were you, Republican Senators, in 1852, when the Senator from Massachusetts stood, if not solitary, at least alone? Where were you? One-half of you, or nearly so, voting for Franklin Pierce, and the rest of you, for Winfield Scott."

Perhaps it would be unjust to assert that all of those who so rabidly advocated the acquisition of San Domingo were actuated by purely selfish motives and were willing to get possession of the place for use by us as a coaling station and

1. Sumner supported Hale and Julian, anti-slavery candidates, in 1852.

harbor without regard to moral or other considerations. President Grant and some who agreed with him, argued that the taking of the island under our protection would compensate its people for the use of their harbor, etc. On the other hand, Sumner held that such a step would simply induce greedy speculators to rush in and gradually usurp the government of the islanders, overturn their institutions and run things to suit themselves and claim the protection of the United States Government while doing so; just as was the case with the Germans in Samoa; just as a handful of Americans since did in Hawaii; just as, with more propriety perhaps, all of the European powers have done or are doing in Africa. At all events, it would seem that Sumner never showed greater consistency in all his career than he did in opposing this movement for the seizure of San Domingo. In obedience to the behest of the slave power, the United States at one time made strenuous efforts to secure Cuba; we even went so far as to indorse what was known as the Ostend Manifesto. But all these attempts fell flat, as did Walker's invasion of Central America. Had the United States succeeded in any of these designs there is little doubt but that grave complications would have arisen that might have had a serious bearing on the results of the Civil War. It was due primarily to the influence of Mr. Sumner that the movement for the annexation of San Domingo was defeated. And to punish him for his course in this connection, he was removed from the chairmanship of the Senate Committee on Foreign Relations, a post which he had held from the time the Republican party first assumed the reins of government. And before his death in 1874, Sumner found himself standing almost alone again in the ranks of the Republican party, which he had helped to found, just as he had stood in 1852 before its birth.

CHAPTER XXII

Outrages in the South and Legislation for Their Suppression—Sumner's Civil Rights Bill—Report of the Investigation of Ku Kluxism—The Force Bill—The Suppression of the Ku Klux by Troops.

The war not only left scores, if not the majority, of theretofore rich men in the South comparatively poor, but turned loose in that section a horde of originally poor whites whose occupation as slave-drivers had been taken away. Landless in a land of planter-barons they had been but parasites and in many cases, worse off than the slaves. They hated the Negroes desperately because slavery rendered all kinds of labor degrading to a white man, and they were constantly kept on the verge of starvation through their false pride. As soon as the colored people were left without the protection of their former masters they were set upon and outraged in every way. The situation became such in 1871 that Congress was compelled to take further steps in the direction of suppressing disorders. The Ku Klux Klan was claiming its hundreds of black victims almost daily; even white men who dared to show any sympathy for the freedmen were mobbed. There were many northern white people in the South at this time; some had gone there previously to administer to the Union soldiers during the war, and remained; others, many of them brave women, had left their northern homes especially on errands of mercy to the distressed freedmen. These were teaching and establishing schools. The report of the Congressional committee appointed to investigate and report on this situation showed that nearly forty thousand men in the State of North Carolina alone belonged to this gigantic league of marauding assassins. The nights were made awful by the weird lights and terrifying whoops of the Ku Klux. In the stillness of the midnight hours these ominous warnings could be heard in connection with the sounds of horses' hoofs against the frozen ground and then the knock at the cabin

door. There would be no light about the hovel and perhaps no strong armed man within, only an old grand sire who had spent his many winters under the yoke; or a mother who would but draw her little children nearer to her as a silent response to their childish queries as axes battered in the cabin door. Neither the gray hairs of the old man nor the prayers and tears of the women, nor the piteous wails of the little children could avail to restrain the remorseless hands of the Ku Klux bent upon their work of outrage and terror. Exorcism by legislation had been tried in vain. But in April, 1871, another Act was passed by Congress for the enforcement of the Fourteenth and Fifteenth Amendments, especially designed to meet the case of the Ku Klux. The Act made the towns, municipalities and counties in which outrages occurred responsible in damages to those aggrieved. Even this piece of legislation proved to be utterly worthless to effect the purpose for which it was designed. The difficulties experienced in getting Congress to pass even so reasonable an Act tend to show how rapidly the radicals lost ground after the last of the seceded states returned to the Union. In the meantime the commission appointed to look into the Ku Klux and other outrages in the South made their report to Congress. The report disclosed a most cowardly plot to deprive the freedmen of all benefits of their freedom in spite of constitutional amendments and Federal statutes. When the matter was taken up it caused a most animated debate in both Houses. For, while there were some who scored the South for attempting such a mean method of taking revenge for its defeat on the field of battle, there were others who, in days gone by, had defended slavery, defended slave-holders in the breeding of slaves like cattle by encouraging the destruction of feminine chastity and the unrestrained sensuality of the men; who had condoned the morals of the master who would beget children by his slave women and then send his own offspring to the auction block, true to their traditions and history in public life, these men defended the Ku Klux Klan. They brazenly asserted that the courts without the aid or intervention of the Federal authorities in the South, afforded ample pro-

tection against all the violence complained of, though it was well-known, the report under consideration being sufficient to remove any doubt of the fact if any previously existed, that those aggrieved by these outrages had no voice in court; and that if any one should be arrested he would most likely be tried by jurymen who themselves were participants in the crimes of the prisoner at the bar. It was truly said that the courts of that section at that time were a "mockery, where a perjured judge, a perjured jury and perjured witnesses swore the rights of the poor away." It was a day of sore trial for the landless, homeless, moneyless, friendless colored people, while the voice of a Republican Congress rang out over the distant hills in statutes which sounded like approaching allies that never came nearer. Finally after a hard struggle, a bill was matured and passed on the 19th of April, 1871, for the suppression of the Ku Klux. This was the most effective piece of legislation ever passed by the reconstructionists; in fact, if we judge by the immediate results, it was second only to the Thirteenth Amendment which abolished slavery. The efficiency of this measure was wholly due to the fact that it was backed up by Federal arms; it was known and will ever be known as "The Force Bill,"[1] and its passage was largely due to the energy of Gen. Benjamin F. Butler. The bitterness with which General Butler was attacked on account of his championing the measure by the southerners who were now all back in Congress, was increased by their hatred of him engendered during the war. General Butler had been one of the first officers to try out and approve of colored men as soldiers. Every effort had been made inside the army and outside to disqualify colored men as soldiers. It was believed that the white officers in charge of colored troops often deliberately led them into traps to be slaughtered and in other ways dealt treacherously by them; being firmly convinced that such was the case, General Butler took the colored troops in his army under his personal command in an attack upon a fort near Petersburg, which the Confederates regarded as impregnable. After witnessing that magnificent charge in

1. The Federal Elections Bill, agitated later and defeated by Mr. Blaine, the Speaker of the House, is sometimes referred to as the "Force Bill."

which nearly six hundred of his colored troops fell without a waver in their line, General Butler swore an oath that he would ever afterwards champion the rights of the colored people of this country as long as he lived. He faithfully kept his oath.[2] Another thing, besides his vigorous conduct of affairs while in charge at New Orleans, that made General Butler especially hated by southerners, was his characteristic rebuff of Colonel Mallory, at Fortress Monroe, when he came to General Butler's camp in quest of certain of his slaves who had taken refuge in the Union camp. General Butler reminded Colonel Mallory that if the alleged slaves were not his property he had no right to them and that if they were claimed as his property, he, General Butler, would hold them as "contraband" of war. This became one of the most talked of incidents that happened during the war. And so the debate on the Force Bill was memorable not only because of the bitter attacks of the southerners upon General Butler, but because the opposition was supported by many others. A short history of the bill and the struggle to pass it follows: On March 10, 1871, Mr. Samuel Shellabarger, of Ohio, introduced a bill for the employment of the land and naval forces of the United States for the enforcement of the laws in the states lately in rebellion and for the protection of all persons within the jurisdiction of the United States. On March 17, Mr. Peters moved the appointment of a committee to look into the affairs of that section, of which General Butler was made chairman, Mr. Peters having declined to serve on the committee which consisted of thirteen members. On this same day the Senate passed a concurrent resolution for the appointment of a joint committee to consist of seven Senators and nine Representatives for the investigation of these affairs. The House amended this so as to have seven Senators and fourteen Representatives and to this the Senate agreed. While this arrangement did away with the Butler Committee, Butler was still of the number appointed by the Speaker on the joint committee. In the meantime, President Grant transmitted a special message to Congress asking for the enact-

2. Butler's Book, Chap. XVI.

ment of some law for the protection of life, liberty and property in the South, and stating that the carrying of the mails and the collection of the revenue were endangered, and that evidence of these facts were before Congress. This message was referred to a special committee of nine, of which Mr. Shellabarger was chairman and General Butler was named second. Mr. Shellabarger reported a bill for the enforcement of the Fourteenth and Fifteenth Amendments in substance, as follows: Section 1. Provided for the abolition of all laws, ordinances, regulations, etc., of any state which discriminated between citizens on account of race, color, etc. Section 2. Provided penalties for any breach of the laws guaranteeing civil or political rights. Section 4. Provided for the suspension of the writ of *habeas corpus* and the placing of rebellious districts under martial law. The bill in this shape was passed by both Houses. In pursuance of this statute, the President, on October 12, 1871, issued a proclamation calling upon the Ku Klux and other like unlawful organizations to disband and to deliver to the United States marshals their arms, ammunition, disguises, etc., within five days. The warning went unheeded and on the 17th day of that month the writ of *habeas corpus* was suspended in all sections in which Ku Klux organizations were known to exist. Several hundred persons were arrested and as many as were proven guilty in a minor degree were released, but 168 were held for trial. When it was discovered that those sent to enforce the law did not intend to perjure themselves and connive at the crimes they were sent to suppress, the Ku Klux fled and even many absconded who were not active in the organization for fear of being suspected. Nobody was ever visited with condign punishment for participating in these outrages; indeed, it was only necessary to show a determination on the part of the authorities to enforce law and order in order to have a quietus put on the operations of the splendidly organized Ku Klux. The difficulty in making reconstruction effective had been with the Federal commissioners and agents who were sent South to execute the decrees of Congress. These gentlemen would leave Washington with a great deal of gusto but on reaching their destination

would apparently league themselves with the rankest opponents of the Washington Government and all that they would do between entertainments at their hotels or quarters would be the writing of letters back to some official bewailing the state of affairs in the South in order to hold on to their job. Even the Federal soldiers quartered in the South were in many cases meaner and more to be feared than the native-born rabble. It was no uncommon thing for some of these Federal soldiers to take property from the poor freedmen and give them a kick for thanks. These braves would often strip freedmen of their clothing on meeting them, leaving their own, reeking with vermin, in exchange; and if the unfortunate freedman complained, he was lucky to get away with his life. But the officers and men sent to suppress the Ku Klux, besides the mere duty, had the incentive of something that savored of military glory; they would not have it said that they were incapable of accomplishing the task that was set before them. In his annual message of December, 1871, referring to the reign of terror and Ku Kluxism in the South, President Grant said: "Information was received of combinations of this character in certain counties of South Carolina. Careful investigation was made and it was found that in nine counties such combinations were active and powerful, embracing a sufficient number of the citizens to control the local authority." But this condition was known to have been general throughout the South at that time. While the South has since seen much of mob violence in one form or another, such outrages as were perpetrated by the Ku Klux Klan until broken up by the Force Bill, have never been repeated.

On March 9, 1871, Mr. Sumner introduced a measure entitled "A bill supplementary to an Act to protect all citizens in their civil rights, and furnish means for their vindication, passed April 9, 1866." The first section set forth the rights of every citizen without regard to color, etc., to an "equal and impartial enjoyment of any accommodation, advantage, facility, or privilege furnished by common carriers whether on land or water; by inn-keepers; by licensed owners, managers or lessees of theatres or other places of public amusement; by

trustees, teachers and other officers of common schools and other institutions of learning, etc."[3] In a short explanatory speech Mr. Sumner said: "I believe that our colored fellow-citizens are exposed to outrages which the Congress of the United States can arrest; and so long as Congress fails to arrest them, the Republican party with which I am associated and with whose welfare I am identified, must suffer. How can the Republican party turn to their colored fellow-citizens for their votes when they leave them to be insulted as they now are whenever they travel upon a railroad car or enter a hotel? Senators may vote this measure down; they may take the responsibility; but I will take mine, God willing." Senators did vote the measure "down," and continued to vote it down at every session of Congress until the time of Mr. Sumner's death in 1874; for Mr. Sumner introduced it at every session, and in his last moments on his dying bed murmured: "Don't let Civil Rights fail." And his Republican colleagues, remembering this injunction and, heeding this voice from the tomb, passed the Sumner Civil Rights Bill at the next session of Congress after its author's death, though the Supreme Court declared it unconstitutional.

3. This was known as the Sumner Civil Rights Bill. It was finally passed March 1, 1875, after Mr. Sumner's death, and declared unconstitutional. See Appendix.

CHAPTER XXIII

General Amnesty—Sumner's Civil Rights Bill and the Battle Over It—Civil Rights Defeated—Sumner's Extemporaneous Speech —Death of Sumner—Civil Rights Bill Passed at Last.

The question of granting amnesty to the participants in the rebellion began to occupy the mind of the people and of Congress very soon after the cessation of hostilities; but the conditions were such that every time the matter made its appearance in any tangible form, it was smitten down. There were many who, like President Johnson, thought an amnesty act should have been among the first things to be passed by Congress after the surrender of Lee. A vast majority, however, both inside and out of Congress, thought that there was no necessity for haste, especially in view of the well-known feeling of the southern people as evidenced by their continued hostile attitude towards the government in consequence of which there was inserted in the Fourteenth Amendment a clause expressly disfranchising certain classes who took a leading part in the rebellion. Whenever one of these proscribed persons desired to vote or run for an office, it was necessary to have Congress remove his disabilities. This was done from time to time and numbers were re-enfranchised in this manner on their petition to Congress. Several attempts at the passage of a general amnesty bill had failed. When Congress met in December, 1870, conditions were much more favorable for the passage of such a measure than they had been at any time before, as the framework of reconstruction was regarded as having been completed and about all the states had returned to the Union. The House accordingly passed a general amnesty act among the first things it did at this session. When the bill was taken up in the Senate, however, Senator Sumner moved to amend it by attaching his Civil Rights bill, which he had constantly kept before the Senate at each session and never lost an opportunity of pressing, though he was

rarely ever able to get it beyond an adverse report from the Judiciary Committee to which it was always referred. The measure now coming up as an amendment to the important amnesty bill, the Senate was compelled to vote upon it. After a long debate a vote was reached which stood 28 to 28 when the amendment was adopted by the deciding vote of the Vice-President. When the question recurred on the main proposition, however, the whole thing was defeated by a vote of 33 to 19, a two-thirds vote being necessary. On May 13, 1871, General Butler reported from the House Judicary Committee another amnesty bill providing in simple terms for the removal of all disabilities arising out of war or on account of the war, excepting from its provisions, however, members of the Confederate government and persons who had been educated at West Point or Annapolis and had taken part in the war against the Union. This passed under a suspension of the rules on the same day it was reported. At this point Mr. Elliott moved to instruct the Judiciary Committee to report a Civil Rights bill forthwith, but the motion failed. This House bill was taken up in the Senate on May 21, and found Mr. Sumner again ready with his Civil Rights bill as an amendment. When the Senate voted down this amendment by a vote of 29 to 13, Mr. Sumner declared his determination never to vote for amnesty unless it should be preceded by or at least accompanied with a civil rights measure; and after another effort he succeeded in getting his measure again before the Senate. The debate as to the relevancy of the measure to the main bill consumed nearly a week before the Senate finally gave in and decided that the Civil Rights bill should be considered and voted upon. This was a great victory for Sumner, who was now being supported by such able colleagues as Senators Edmunds, Conklin and Nye. Senator Carpenter, the very talented orator and tactician from Wisconsin, was in favor of the measure for its effects upon the South, he claimed, regarding it simply as a punishment, but thought it unconstitutional, on which account he worked vigorously against it. He offered as a substitute for the Sumner bill, a measure that would be applicable only to such corpora-

tions and places as did business under the authority of a state, while the Sumner bill took in hotels, railroads and everything of the kind generally and particularly the right of colored men to serve on juries. The Carpenter substitute was voted down and the fight on the Sumner bill continued. Indeed, the Sumner Civil Rights Bill agitated the whole country. It was the theme of sermons, the subject of debate in lyceum and school, and the topic to which leading editors daily referred in their papers. The most bitter attacks were made upon Sumner in the public press and nearly every mail brought him letters threatening his life; but nothing but death caused Mr. Sumner to cease his efforts to have what he called this "capstone placed upon the column of reconstruction." By his earnestness he whipped many of his lukewarm colleagues into line or constrained them to keep silent. There was nothing more certain than that amnesty had to come. It had the strongest public sentiment in its favor. The only care needed was to hold this sentiment in check until the beneficiaries of the act should fully appreciate it as an act of grace rather than regard it as a concession to their demands. On the other hand, civil rights was a matter that might easily be side-tracked without materially affecting the interests of the dominant party to which the Negroes were destined to stick at all events. Sumner had succeeded in defeating the amnesty bill and the struggle had been kept up until all hands were sick of it. And so on May 21 (1871) after a long day's session, it was decided to spend the evening in debate upon the amnesty bill, which was to be voted on the next day after voting upon Sumner Civil Rights Bill which, it was agreed, should be passed at the same time. When the session was prolonged until late and still later in the night many of the Senators left for their homes, and among these was Mr. Sumner. Between 5 and 6 o'clock the next morning, when there was scarcely a quorum left in the chamber, Mr. Carpenter, taking advantage of the absence of Mr. Sumner, called up the latter's Civil Rights bill, had everything stricken out except the bare title and had inserted his (Carpenter's) substitute Civil Rights bill which had been previously

rejected, but which was now easily passed by the aid of the Democrats, who voted for it to a man. Mr. Sumner, who had been aroused from his bed and informed of what was being done, hurried to the Senate, but arrived just too late to have the matter held up. The amnesty bill was now called up and passed, the Senate having technically kept its word both as to not voting "until the next day" and also as to voting on civil rights before passing the amnesty bill. Since the amnesty bill had already been passed by the House, nothing more remained to be done to make it a law except the attachment of the President's signature; on the other hand, the civil rights bill having originated in the Senate, emasculated as it was, had still to be juggled with in the House, where its fate was doubtful. Excited by the trick that had been played on him, Mr. Sumner made the most impassioned extemporaneous speech ever attempted by him in Congress. After referring to the unfair advantage taken to pass upon such important legislation when a bare quorum of the Senate was present, Mr. Sumner said: "I sound the cry; the rights of the colored people have been sacrificed in this chamber where the Republican party has a large majority; that party by its history, its traditions and all its professions bound to their vindication. I sound the cry. Let it go forth that the sacrifice has been perpetrated. Amnesty has been adopted, but the rights of the colored race, where are they? Sir: I call upon the colored people to take notice of the way in which their rights are paltered with. I wish them to understand that here in this chamber with a large Republican majority, this sacrifice has been accomplished, and let them see how it was done." We might here add that the sounding of that cry had but little effect upon the colored voters in connection with the political party whose chief representative had signed the proclamation of their freedom, and who, with a loyalty characteristic of the race, voted solidly for that party to the end of their generation notwithstanding the many times their interests were sacrificed by a Congress that had a large Republican majority. Again and again since that time such things have occurred in the same chamber where there was a Republican majority,

that might justify a man like Sumner in "sounding the cry." Bills intended to secure fair Federal elections;[1] bills intended to extend Federal aid to education when it was plainly seen that the southern states were either unable or unwilling longer to support public schools for colored children,[2] have all died, like Sumner's Civil Rights Bill, in the Senate where the Republicans had a large majority. Whatever regret the reformed Republicans may have on account of having bestowed the suffrage upon the freedmen, surely the old party could not complain. The elective franchise was, perhaps, never used more conscientiously than by the freedmen. So far from selling their vote, many of them suffered not only the loss of employment but even the loss of life itself for the sake of the Republican party even after it had openly ceased to champion their cause, which attitude was more than emphasized not only by the inactivity of Congressmen but by the activity of Republican judges on the bench of the highest court in the land.

When the Carpenter substitute Civil Rights Bill reached the House it was deferred and kept in committee until June 7, 1872, when it was called up and an endeavor made to pass it under a suspension of the rules, but it failed by a vote of 83 to 73, a two-thirds vote being necessary to pass it. There were 84 members present who did not vote.

But Mr. Sumner did not give up the fight. When the Forty-third Congress met in December, 1873, he presented a petition bearing on the subject which contained many thousand signatures. As the country became more and more settled and people returned to their daily occupations as merchants, etc., less and less interest was taken in what Congress was or was not doing about such matters as civil rights for freedmen and slower and slower turned the reconstruction mill. Then, too, the great champion of civil rights was destined soon to lay down his burden and rest; for early in the year 1874, March 11, he reached the state in which all men are unquestionably equal, and where there are no problems for the

1. Defeated by Blaine.
2. Defeated by Quay and Sherman.

future, neither of races nor kindreds nor tongues. Both Sumner and Stevens, two of the most conspicuous champions the colored race ever had in Congress, each devoted the last days of his career to a single issue for which he was fighting when death closed the debate; with Stevens it was his endeavor to persuade his colleagues to provide some support for the penniless freedmen; with Sumner it was civil rights.

CHAPTER XXIV

The Election of Hayes—The Removal of Federal Troops from the South and the End of the Carpet-Bag Regime.

The next national act of more or less consequence to the colored people was the removal of the Federal troops from the South by President Hayes. Attempts have been made to reflect great discredit upon Mr. Hayes because he ordered the removal of these troops at that time, but if there was any blame attached to the action, it would hardly seem fair to place it all on the shoulders of Mr. Hayes, who seems to have been made the scapegoat of his party. The circumstances leading up to the nomination and the election of Mr. Hayes to the presidency are very interesting, and to tell the whole story would require a large volume in itself. There was a great deal of excitement throughout the country just prior to the assembling of the Republican National Convention in 1876, caused by various rumors to the effect that General Grant would be nominated for a third term as President. Grant himself would not say whether or not he would run if nominated, but spoke of the matter in such a manner as to lead the public to believe that he would not object "if the exigencies of his party demanded it." In other words, as they say, he placed himself "in the hands of his friends." Before the convention assembled, the House of Representatives, then Democratic, took cognizance of the matter and placed on record a resolution directly condemning the third term scheme as "undemocratic and unpatriotic." The vote on this resolution was 234 to 18, embracing in the affirmative every Democratic member and all but 18 of the Republicans. There were in Congress, however, some strong supporters of Grant for a third term and among these were Senator Conklin, of New York, and Senator Morton, of Indiana. When Grant finally withdrew from the contest, many of his supporters themselves became aspirants for the nomination: Morton, Conk-

lin, Bristow (Grant's Secretary of the Treasury) and others, among whom were James G. Blaine and R. B. Hayes.

Of all the candidates, Mr. Blaine was the most popular with the politicians. He had been for six years Speaker of the House and had become the acknowledged leader of the minority when the Republicans lost their ascendancy in that body. Hayes had been twice Governor of Ohio but was little known outside of his state. Bristow had just created a boom in his favor by his vigorous prosecution of the "Whiskey Ring." Morton was well known, and while nothing detrimental could be said about him, he was unable to unite his party on him. Blaine would have evidently received the nomination but for the fact that his name was seriously connected with two railroad scandals, the Union Pacific & Little Rock and the Fort Smith roads. The investigation into these affairs is said to have brought a great deal of the alleged corruption dangerously near Blaine's door, and, as a consequence, blighted his chances for the nomination, besides he had the powerful opposition of Conklin, then at the very height of his power in New York. At the opening of the convention Mr. Blaine had more than double the number of delegates of any other one of the aspirants, but after the first ballot his strength began to wane until the fifth ballot, when Mr. Hayes was given 384 out of the 756 votes and was declared nominated. The years between 1872 and 1876 were memorable for panics and hard times, and, as usual in such cases, the people were inclined to blame the party in power for the distressing conditions. There was a great cry for "reform," a call for a "new man" with a new policy as against what they called "Grantism" and "Caesarism."

The Democrats nominated Samuel J. Tilden, of New York. Mr. Tilden's record was clean and the comparative obscurity of Mr. Hayes gave him little advantage over his able Democratic opponent. Besides, Mr. Tilden had just covered himself with glory by successfully prosecuting the famous, or rather infamous, "Tweed Ring," by which course he won the enmity of Tammany Hall, a thing in itself which most people of the time seemed to have regarded as a sure sign of political purity.

The platform upon which Mr. Hayes invited support was a clean-cut instrument. It was a plea for the union of the states and the supremacy of the Constitution; for the liberty and equality of all men before the law; for the vigorous exercise of constitutional powers in the enforcement of law and order; for the most earnest support of the free school system; for a protective tariff; for pensioning Federal soldiers; for resumption of specie payment. The campaign was rather spiritless and tame. On the morning following the election it was claimed and generally believed that Tilden had been elected, having carried every southern state besides New York, New Jersey, Indiana and Connecticut, giving him 203 electoral votes out of a total of 369. After this early announcement everybody became silent during the rest of the day, but on the second day after the election a report was flashed over the country to the effect that Hayes had carried South Carolina, Florida and Louisiana, giving him a majority of one vote in the electoral college. Cries of fraud were rife and the whole country was thrown into a fierce agitation. There were rumors of all kinds of deals being consummated for one purpose or another, but no one seemed able to fasten on to anything definite. The key to a cipher dispatch was alleged to have been found shortly after this time which revealed a deliberate plot on the part of some of the powers of both parties to defraud Mr. Tilden out of his seat as President. It was claimed that some leading Democrats of the South conspired with the Republicans to have Hayes seated with the understanding that the Federal troops were to be removed from the South and a more liberal policy pursued in dealing with that section generally; and that this deal was the more easily consummated because it was known that all sorts of fraud had been practiced in the South in connection with the election, and it was feared that some kind of investigation might follow if a more serious dispute should arise; while on the other hand, the Republicans were willing to condone the alleged fraud on condition that Hayes should be seated. However one may think about the rumors afloat, it is definitely known that matters were terribly mixed up. To begin with, there were two

sets of returns and certificates from South Carolina, Florida and Oregon. The question as to how the electoral votes should be counted became so grave that Congress had to intervene by an Act establishing the Electoral Commission of March 4, 1877. This commission was composed of fifteen members, eight Republicans and seven Democrats; and there is little doubt but that the seating of Hayes as President instead of Tilden was due wholly to the make-up of this commission, for every man voted for his party candidate, and by a process of "counting in and counting out" as it is said, the Presidency fell to Hayes. The popular vote for Tilden was very much larger than that for Hayes, and this fact, on becoming known, added its quota to the general excitement of the time. Whether there was any agreement or understanding with Mr. Hayes and his friends about removing the troops or not, it was quite a natural thing to consider, under the circumstances. The country had been sufficiently stirred over recent events and anything that tended to allay feeling and bring about better conditions would naturally appeal to those in control of the government. The times for some considerable period before this had been panicy and hard and the grumbling on the part of the southern people at having troops quartered on them in times of peace was beginning to re-echo in the North and West, notwithstanding the fact that the platform upon which Mr. Hayes was elected had a decided ring for the enforcement of law and order by use of the Federal arms, if necessary. At all events, the Federal troops were removed from the South and the reconstruction governments in that section began at once to disintegrate; the Carpet-baggers had to leave in the wake of the soldiers and the whole Republican party in the southern states became demoralized and has been demoralized ever since.

The reconstruction period proper may be said to have ended with President Grant's second term. After this time there was not only a cessation of such legislation but an apparent reaction in the other direction. Many of the statutes passed between 1865 and 1875 were either annulled by the courts, openly repudiated by the states or smothered to death by an

adverse public sentiment. But the most vital portion of the legislation enacted with a special view to the interest of the colored people still remains and always must remain because these statutes and regulations, like the fortunes of the colored people themselves, are connected and inseparably bound with the general welfare of the nation. The last three amendments to the Constitution are the bulwarks not only of the colored man's liberty, but must be regarded with an equally jealous eye by every member of our heterogeneous population. The Fourteenth Amendment especially is not only the palladium of the people's liberty, but business enterprises in corporate form find in this amendment an harbor of refuge. Then there is our great free school system, though deformed and much changed from what it was in its fair infancy in the South, it still remains a monument to the constructive genius of the carpet-bagger.

CHAPTER XXV

The Education of the Colored People—Ante-Bellum Teachers and Promoters of Education—The Beginning of the Higher Education—The work of General Howard's Bureau—The Beginning of the Free Public School Under Government Supervision—The Final Turning Over of Everything to the States—The State Policy: Disfranchisement of Negroes; Curtailment of School Privileges; Discriminations Countenanced by the Courts—The End.

Most all history begins in romance; and scarcely anything more romantic can be found than an account of the early struggle to educate the children of the colored race in America. While public records abound in statutes and regulations making it a crime or at least some grade of a public offense to teach Negroes, there is little or nothing in such records to show how the movement in the other direction actually started. For information concerning these beginnings, therefore, one must turn to the lives of individuals and the records of private institutions.

Among the earliest efforts in this direction was the school established by Anthony Benezet, a Quaker, at Philadelphia, in about the year 1770. After this there were various other efforts in a smaller way, perhaps, made in and about Philadelphia, to afford some educational facilities to the colored people. All of these were taken under a sort of recognition by the Board of Control of Philadelphia in 1822.[1] About ten years later or in 1830, Richard Humphreys, who was also a Philadelphia Quaker, left a bequest of ten thousand dollars to be used for the education of the colored youth. Some six persons, all members of the Society of Friends or Quakers, constituted themselves trustees, took over the fund and set about the work of establishing a school upon the Humphrey's foundation. After some twenty years these trustees succeeded in securing a building within the city limits for their purpose and established the Institute for Colored Youth

1. See Curtis' Hist. of Pub. Schools of Phila., p. 15.

in 1851. This was made a sort of graded or high school and continued as such until it was moved to Cheyney, in Chester County, Pa., in 1902, where the work is still carried on with particular attention to certain industrial features. Meager as these few facilities were, they made Philadelphia a sort of educational center for colored people. There were some worthy efforts made in this direction about this same period in some other parts of the country; notably among these was the school for colored girls opened by Miss Prudence Crandall, at Canterbury, Conn., in 1831, on account of which she was mobbed and outraged in every conceivable manner.

At the "First Annual Convention of the People of Color," held at Philadelphia, in 1831, a committee was appointed to devise a plan whereby funds might be raised for the purpose of starting a school. This committee afterwards reported to the convention that a plan had been submitted by Messrs. Garrison and Tappan and Rev. S. S. Jocelyn, who were present and addressed the meeting, for the liberal "education of young men of color on the manual labor system." The plan contemplated the establishment of a school at New Haven as soon as twenty thousand dollars could be raised. New Haven had been selected as the location of the institution "on account of the liberality of the people of Connecticut—the people are friendly, pious and humane." Little did they dream that within two years from that time the Connecticut Legislature, at the instance of "the good people of Canterbury," was destined to pass a law making it a serious offense to maintain a boarding school for Negroes anywhere in the state, in order to break up Miss Crandall's school.

There was also Miss Myrtilla Miner, who, after having seen much of slavery while teaching a private school in Mississippi, went to Washington in 1851 and with the one hundred dollars which she had saved, opened the first school for colored girls in the District of Columbia. Miss Miner began with six pupils in a wreck of a building, but within a year she had forty pupils and a building worth more than four thousand dollars, one thousand of which having been donated by Mrs. Stowe from the proceeds of the sale of "Uncle Tom's

Cabin." Like Miss Crandall, Miss Miner had visited upon her nearly every species of outrage known to the catalogue of villiany. Then there were a few more or less obscure institutions, like Oberlin, under President Finney, that braved the tide of odium and public contempt to admit a few colored students. During and just after the war, however, heroes and heroines in this field came thick and fast.

There was Dr. Tupper, who went into the woods of North Carolina while they were yet dim with the smoke of battle and resounding with the echoing footsteps of retreating troops, bought land with the three hundred dollars which he had saved as a private in the army, and with his own hands hewed the logs and constructed the building that was to become Shaw University; and his magnificent wife, one of New England's most choice women, gave her dowry to this project of her husband, and when he died a few years ago, leaving her poor and alone, she only requested to be permitted to pass the remainder of her days in one of the university buildings. There was Rev. J. G. Fee, who was driven from his father's roof in Kentucky for founding Berea College; and Armstrong, to whose memory Hampton Institute is a fitting monument. And there are hundreds of noble women who went South to be abused and many of them to die while trying to help the union soldiers or to encourage the freedmen in their struggle to learn.[2] These nurses, etc., who were with the Union army having found the Negroes very apt and anxious to learn, volunteered their services as teachers, and by their reports induced many others to go into this field. Many of the department clerks at Washington constituted themselves into a teaching force and opened up night schools. Howard University, now by far the largest and best equipped institution for the higher education of the Negroes in the country, actually grew out of these unorganized efforts on the part of department clerks, which were brought to the attention of the leading men of the nation at Washington. General Howard, who was in charge of the Bureau of Freedmen, Refugees and Abandoned Lands, was given almost unlimited power to aid

2. See "The Negro Common School," Atlanta Univ. Pubs., by DuBois, 1901.

and succor his wards in any direction his discretion might dictate; and as the representative of the government, his bureau began at once to assume control and direct the organization of the work which was to form the basis of a public free school system.

Miss Miner's school was incorporated by Congress in 1863, about twelve years after it was established. This was about the first time Congress had taken any definite or decided action with regard to anything in the line of education for colored people although it was by no means the first time the attention of that body had been called to the matter in one way or another. In 1862 Mr. Edward H. Rollins, of New Hampshire, in bringing forward his bill for the abolition of the Black Codes of the District of Columbia, which was approved May 21 of that year, had attached to the measure a provision setting aside ten per cent. of all the taxes paid by the colored people of the District for the education of their children. Under this act trustees to receive and disburse this fund were appointed. By an Act passed July 23, 1866, the cities of Washington and Georgetown were required to pay over to the trustees of the Colored Schools of the District of Columbia such proportionate share of all moneys collected for educational purposes as the number of colored children of school age should bear to the whole number of both white and colored children of such age. The effect of this law was to equalize the school advantages between the races without regard to the amount of taxes paid by either; and this is the law in all the states, perhaps, though it is deliberately ignored in the South generally.[3]

The appropriation for the support of the Freedmen's Bureau for the year 1866 carried a large item for educational purposes. General Howard had been so successful in the organization of schools, etc., that Congress was inclined to deal liberally with his bureau in appropriating funds for this purpose. He dwelt largely upon this branch of his work in his report to Congress, in 1866, according to which there were eighty thousand children under instruction by teachers con-

3. See Appendix for Court Decisions.

nected with this bureau. General Howard was authorized to co-operate with such benevolent societies, etc., as were making any organized effort to establish institutions for the education of the colored youth; and in this way he was enabled to assist, more or less, in the establishment of about all of the older institutions devoted to this purpose throughout the South. No such aid could be given, however, except there was a duly and properly organized body authorized to receive it, and which could show some progress in the work as well as some future prospects. The American Missionary Association, which at the time was Congregational in the broadest sense, consisting of prominent men and women of all denominations, was enabled, through the assistance of the Freedmen's Bureau, to perfect the establishment of many of its schools in the South. The amount of work which the American Missionary Association has done in the direction of affording facilities for the higher education of the Negroes can not be over-estimated. Its influence has been and is still being felt in nearly every institution of the kind in the country. Much of the money disbursed under the auspices of the Freedmen's Bureau belonged, more or less, directly to the Negroes themselves, having been back pay and bounty money credited to colored soldiers and sailors.

After 1863, when drafting men for the army became necessary, several of the states raised funds and placed them at the disposal of the government for the purpose of hiring Negroes in Virginia and the Carolinas as soldiers to be credited to the quota of the states raising the money; and it is well known that some two hundred thousand Negroes enlisted between 1863 and 1865. Their anxiety to enlist, looking upon the act as an opportunity to strike a blow for their liberty rather than to make money, coupled with their ignorance of geographical locations, caused the identity of many of them to be lost. This was especially the case with those who fell in battle, as so many did. The bounty money and wages due to those who perished while in the service were turned over to the Freedmen's Bureau primarily to await lawful claimants. Something was added to this fund also by General Butler, who,

having observed that his colored troops generally seemed to have had little or no appreciation for money, withheld a portion of their pay for the benefit of their wives and children. All of this money that was not duly claimed very properly found its way into the Freedmen's Bureau. Much of this money collected by or turned over to the Bureau was demanded and paid out; much of it never was demanded and never will be paid out to any individual claimant.[4]

The bill passed for the continuance of the Freedmen's Bureau for one year from July, 1868, contained a clause expressly providing that all money not otherwise expended by the Bureau, left on hand from funds held by the same should be used for the education of the freedmen and refugees. This bill also gave the Bureau authority to turn over all its school buildings and educational paraphernalia for the education of freedmen to such trustees, corporations, etc, as should be prepared to assume and carry on the work. The old Bureau was now preparing for its dissolution and soon after this time it began to relinquish its interests in the freedmen affairs and to turn them over to the War Department, while holding and in the meantime extending its supervision over matters of education. About two years later a bill was passed (March 30, 1870) formally abolishing all except the educational functions of this institution, and turning over all else, including the collection and payment of bounties, etc., to colored soldiers and sailors, to the War Department. Two years later, in 1872, the remainder of this famous institution was absorbed by the Interior Department when it became known as the Bureau of Education and continued to encourage and foster our general free school system, the foundations of which had now been pretty securely laid in the South by the reconstructionists. In the meantime, Congress had been giving considerable

4. While the author was employed in the office of the Treasurer of Howard University, Washington, D. C., in 1896, he was approached by an aged colored man, who came to inquire as to the location of the Freedmen's Bureau. He said that during the time he was employed as a cart driver under the auspices of the Bureau, one-half his wages was retained to be applied to the educational fund for the benefit of the freedmen; that he had heard that they were now paying the money back, and so he had come in from some distance in the country to get his share. There seemed to be little doubt about the innocent sincerity of this old man; part of his wages had, doubtless, been held up, but it most likely had been done by some unscrupulous clerk or combination of clerks to cheat him.

attention to the free school scheme. Mr. James M. Ashley made an endeavor to have a national free school system established by means of a constitutional amendment (December 10, 1867); and a short while later, January 22, 1868, Mr. George W. Julian introduced a resolution directing the House Committee on Education and Labor to report a bill for the establishment of a free school system for the education of all the children of the state without regard to race or color. But inasmuch as the states seemed more or less willing to assume the work begun by the Freedmen's Bureau and to carry on the same as a state obligation, neither the Ashley nor the Julian proposition was enacted into law. Mr. Hoar, then a Representative, but later a Senator from Massachusetts, actually reported a bill proposing national aid to education, but the states cried "hands off" and the measure failed. The same disposition was shown towards the Blair bill of 1889-90. There was an essential difference, however, between the Hoar measure and the bill urged before the Fiftieth Congress by Senator Blair. The trouble in 1870, which Mr. Hoar's measure was intended to remedy was the apparent reluctance on the part of some of the states to suppport the free schools, and the measure aimed to give the Federal Government control to the extent of compelling the states to afford proper facilities, provided they were able to do so, and upon proof of their inability, then the government was to step in with its support. Mr. Blair's bill presumed inability on the part of the states in the first place and undertook to offer government aid generally. By the year 1890 the southern states generally had ceased to pretend to afford adequate educational facilities to their colored children; they had apparently ceased to try or even to desire such a thing. The Republican party pledged itself to the passage of the Blair bill or some other legislation of the same or similar purport, and the Blair bill did pass the House by a large majority and its author labored earnestly to get it through the Senate, where the Republicans also had a large majority, but the measure failed.

While the Hoar measure was before Congress in 1870, the school situation as it was at the time, was pretty thoroughly

discussed. Mr. Sumner made a strenuous effort to have the color line abolished in the District of Columbia, but failed. The thinly veiled threats on the part of Congress as revealed in these discussions, to take the whole matter of the common schools in hand notwithstanding the desire of some to defer to State Rights, caused a much more liberal policy to be pursued by those having the oversight of the colored schools throughout the country. And so influenced, perhaps, at once by a sense of duty and the fear that further manifestations of stubbornness would likely bring harder conditions to which the national government would require them to conform, the southern states began to take hold of its free school problem with more earnestness. But they did not keep up these efforts insofar as the colored schools were concerned. From a more or less equitable administration of the systems under which all the children of the state were treated alike in theory at least, they have gone back step by step from the advocacy of the doctrine that colored children need a *different sort* of education from that of other children until the stage has been reached where many boldly claim that they should have *no education*, or at best, nothing more than the mere rudiments. But this position is consistent and is the only logical ground upon which those can stand who believe that all Negroes are and of right ought to be, hewers of wood and drawers of water. If there are any who ought to be held to drudgery by social custom, if not by civil law, they should be so conditioned as to enable others the more easily to exploit their labor. Degrade an ignorant man sufficiently and he will become contented; make him ignorant and the degradation will take care of itself; therefore those who wish to exploit the labor of others, strive to keep the latter ignorant. The separate school for colored children has lent itself beautifully to this scheme; so in the South we see, in more or less thickly inhabited parts, schools for whites running nine months while those for others are open for four or perhaps five months; in less densely populated districts we see some sort of school for whites but none for others.

The public schools even among the whites of the South in

the beginning had to struggle against the "old field" school, and the aristocratic sentiment in favor of the "select private school," which institutions were almost as characteristic of the South as was slavery; for wide, indeed, was the gulf that divided the wealthy from the poor whites in the South in the days gone by, and the children of the two classes could have no intercourse with each other whatever in school or elsewhere.

And so the cord, hard and tense with years of oppression, that was cut in 1863, let the pendulum of history swing at once through a mighty arc only to be brought back by the gravitation of conservatism far in the direction from which it started. The privilege of citizenship and other privileges bestowed upon the colored people in the late slave states which were at first attacked by the mob, then contested in politics, finally have been largely taken away by the law. The highest courts in the land have declared that the nation that had power to bestow these privileges is powerless to protect the intended beneficiaries of the privileges in the enjoyment of them over the objections of the individual states. Presidents and other high national officials, who once prated about the "equality of all before the law," now declare that "it is not time for our colored citizens to expect to enjoy the full privileges of their citizenship." How much further the pendulum may swing in this backward direction remains to be seen. But the day is past when any party will accept the race question as an issue in politics. Things like the Brownsville affair[5] may loom up large and seem of great significance; the welkin at times may yet ring with dim echoes of the past, but the race question in the United States as it once was, will never again be THE QUESTION BEFORE CONGRESS.

5. The matter of discharge of certain soldiers of the Twenty-fifth Regiment (colored), without honor, by President Roosevelt, was the subject of a long Congressional investigation, but the order was never revoked.

APPENDIX

APPENDIX A

AMNESTY PROCLAMATION, DECEMBER 8, 1863

Whereas, in and by the Constitution it is provided that the President "shall have power to grant reprieves and pardons for offenses against the United States except in case of impeachment;" and

Whereas, there is a rebellion now in existence whereby the loyal governments of several states have for a long time been subverted, and many persons have committed and are now guilty of treason against the United States, and

Whereas, with reference to said rebellion and treason, laws have been enacted by Congress declaring forfeitures and confiscation of the property and liberation of the slaves, all upon terms and conditions therein stated; and also declaring that the President shall be authorized at any time thereafter by proclamation, to extend to persons who have participated in the existing rebellion in any state or part thereof, pardon and amnesty, with such exceptions and at such times and on such conditions as he may deem wise and expedient for the public welfare, and

Whereas, the congressional declaration for limited and conditional pardons accords with well established judicial expositions of the pardoning power; and

Whereas, with reference to such rebellion the President of the United States has issued several proclamations with provisions in regard to the liberation of the slaves; and

Whereas, it is now desired by some persons heretofore engaged in said rebellion to assume their allegiance to the United States and to re-inaugurate loyal state governments within and for their respective states:

Therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare and make known to all persons who have directly or indirectly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them with restoration to all rights and property except as to slaves and in proper cases where the rights of third parties shall have intervened, and upon condition that every such person shall take and subscribe to an oath thence forward to keep and maintain such oath inviolate, and which oath shall be registered for permanent preservation and shall be of the tenor and effect following to wit: I, ————, do solemnly swear in the presence of Almighty God, that I will henceforth support, protect and defend the Constitution of the United States and of the Union of the states thereunder, and that I will in like manner abide by and faithfully support all the acts of Congress passed during the existing rebellion with reference to the slaves, so long and so far as not repealed, modified or held void by the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the

President made during the existing rebellion having reference to the slaves, so long and so far as not modified or declared void by decisions of the Supreme Court, so help me God.

The persons excepted from the provisions of the foregoing are all who are or who shall have been civil or diplomatic officers or agents of the so-called Confederate Government; all who are or who shall have been military or naval officers of the so-called Confederate Government above the rank of colonel in the army or lieutenant in the navy; all who have left judicial stations under the United States to aid in the rebellion, and all who have engaged in any way in treating colored persons or white persons in charge of such otherwise than as lawful prisoners of war and which persons may have been found in the United States service as soldiers, seamen or in any other capacity.

I do further proclaim, declare and make known that whenever in any of the States of Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, North Carolina, a number of persons not less than one-tenth of the number of votes cast in such states in the Presidential election in the year A. D. 1860, each being a qualified voter by the election laws of the states existing immediately before the so-called act of secession, and excluding all others, shall re-establish a state government which shall be republican in form and in no ways contravening said oath, such shall be recognized as the true government of the state and the state shall receive thereunder the benefits of the constitutional provision which declares that the "United States shall guarantee to every state in the Union a republican form of government and shall protect each of them against invasion and on the application of the legislature or executive (when the legislature can not be convened) against domestic violence."

I do further proclaim, declare and make known that any provision which may be adopted by such government in relation to the freed people of such state which shall recognize and declare their permanent freedom, provide for their education which may yet be consistent as a temporary arrangement, with their present condition as a laboring, landless, homeless class, will not be objected to by the national Executive.

It is suggested as not improper that in the construction of a loyal state government in any state, the name of the state, sub-division, the constitution and general code of laws as they were before the rebellion, be maintained, subject only to the modifications made necessary by the conditions hereinbefore stated, and such others, if any, not contravening said conditions, and which may be deemed expedient by those framing the new state government.

To avoid misunderstanding it may be proper to say that this proclamation, so far as it relates to state governments, has no reference to states wherein loyal state governments have all the while been maintained. It may be proper to further say that whether members sent to Congress from any state shall be admitted to seats constitutionally rests exclusively with the respective Houses and not to any extent with the Executive. And still further, that this proclamation is intended to present to the people of the states wherein the national authority has been subverted, a mode in and by which the national authority and loyal state governments may be re-established within said states or in any of them, and while the mode presented

is the best the Executive can suggest with present impressions, it must not be understood that no other possible mode would be acceptable.

Given under my hand, etc., at Washington, December 8, 1863.

ABRAHAM LINCOLN, President, etc.

WILLIAM H. SEWARD, Secretary, etc.

PROCLAMATION

Whereas, at the late session, Congress passed a bill guaranteeing to certain states whose governments have been usurped or overthrown, a republican form of government, a copy of which is hereto annexed; and

Whereas, the said bill was presented to the President of the United States for his approval less than one hour before the *sine die* adjournment of said session, and was not signed by him; and

Whereas, the said bill contains among other things, a plan for restoring the states in rebellion to their proper political relations to the Union, which plan expressed the sense of Congress upon the subject, and which it is now thought fit to lay before the people for their consideration;

Now, therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare and make known that I am, as I was in December last, when by proclamation I propounded a plan for restoration, unprepared by formal approval of this bill to be inflexibly committed to any single plan of restoration, and while I am also unprepared to say that the free-state constitutions and governments already adopted and installed in Arkansas and Louisiana shall be set aside and held for naught, thereby repelling and discouraging loyal citizens who have set up the same as to further effort, or to declare a constitutional competency in Congress to abolish slavery in the states, but am at the same time sincerely hoping and expecting that a constitutional amendment abolishing slavery throughout the nation may be adopted;

Nevertheless, I am fully satisfied with the system of restoration contained in the bill, and as one very proper for the loyal people of any state choosing to adopt it; and that I am, and at all times shall be, prepared to give executive aid and assistance to any such people, so soon as the military resistance to the United States shall have been suspended in any such state, and the people thereof shall have sufficiently resumed their obedience to the Constitution and laws of the United States, in which case military governors will be appointed, with discretion to proceed according to the bill.

In testimony whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington on the 8th day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the year of Independence of the United States, the eighty-ninth.

ABRAHAM LINCOLN.

PROTEST OF SENATOR WADE ET AL.

To the Supporters of the Government:

We have read with surprise, but not without indignation, the proclamation of the President of the 8th of July, 1864.

The supporters of the Administration are responsible to the country for its conduct; and it is their right and duty to check the encroachments of the Executive on the authority of Congress, and require it to confine itself to its proper sphere.

It is impossible to pass in silence this proclamation without neglect of that duty; and having taken as much responsibility as any others in supporting the Administration, we are not disposed to fail in the other duty of asserting the rights of Congress.

The President did not sign the bill "to guarantee to certain states whose governments have been usurped, a republican form of government," passed by the supporters of the Administration in both Houses of Congress after mature deliberation.

The bill did not, therefore, become law; and it is, therefore, nothing.

The proclamation is neither an approval nor a veto of the bill; it is, therefore, a document unknown to the laws and the Constitution of the United States.

So far as it contains an apology for not signing the bill, it is a political manifesto against the friends of the government.

So far as it proposing to execute the bill, it is not law; it is a grave Executive usurpation.

It is fitting that the fact necessary to enable the friends of the Administration to appreciate the apology and the usurpation, be spread before them.

The proclamation says:

"And, whereas, the said bill was presented to the President of the United States for his approval less than one hour before the *sine die* adjournment of said session, and was not signed by him."

If that be accurate, still this bill was presented with other bills that were signed.

Within that hour, the time for the *sine die* adjournment had been postponed three times by the votes of both Houses; and the least intimation of a desire for more time by the President to consider this bill would have secured a further postponement.

Yet the committee sent to ascertain whether the President had any further communication for the House of Representatives, reported that he had none; and the friends of the bill, who had anxiously waited on him to ascertain its fate, had already been informed that the President had resolved not to sign it.

The time of presentation, therefore, had nothing to do with his failure to approve it.

The bill had been discussed and considered for more than a month in the House of Representatives, which it passed on the 4th of May. It was reported to the Senate on the 27th of May, without material amendment, and passed the Senate absolutely as it came from the House on the 2nd of July.

Ignorance of its contents is out of the question. Indeed, at his request, a draft of the bill substantially the same in material points and identical in the points objected to by the proclamation, had been laid before him for his consideration in the winter of 1862-3.

There is, therefore, no reason to suppose that the provisions of the bill took the President by surprise. On the contrary, we have reason to believe them to have been well known and this method of preventing the bill from becoming a law without the constitutional responsibility of a veto had been resolved on long before the bill

passed the Senate. We are informed by gentlemen entitled to entire confidence that before the 22nd of June, in New Orleans, it was stated by a member of General Banks' Staff, in the presence of other gentlemen in official position, that Senator Doolittle had written a letter to the department that the House Reconstruction Bill would be staved off in the Senate to a period too late in the session to require the President to veto it in order to defeat it; and that Mr. Lincoln would retain the bill, if necessary, and thereby defeat it.

The experience of Senator Wade in his various efforts to get the bill considered in the Senate was quite in accordance with this plan, and the fate of the bill was accurately predicted by letters received from New Orleans before it had passed the Senate.

Had the proclamation stopped there it would have been only one other defeat of the will of the people by the Executive perversion of the Constitution. But it goes further. The President says: "And, whereas, the said bill contains among other things, a plan for restoring the states in rebellion to their proper political relation in the Union, which plan expressed the sense of Congress on that subject, and which plan it is now thought fit to lay before the people for their consideration."

By what authority of the Constitution? In what form? The result to be declared by whom? With what effect when ascertained? Is it to be a law by the approval of the people, without the approval of Congress, at the will of the President? Will the President on his opinion of the popular approval execute it as a law? Or is this merely a device to avoid the serious responsibility of defeating a law on which so many loyal hearts reposed for security?

But the reasons now assigned for not approving the bill are full of ominous significance. The President proceeds: "Now, therefore, I, Abraham Lincoln, President of the United States, do proclaim, declare and make known that while I am (as I was in December last, when by proclamation I proposed a plan for restoration) unprepared by a formal approval of this bill to be inflexibly committed to any single plan of restoration."

That is to say, the President is resolved that the people shall not *by law* take any security from the rebel states against a renewal of the rebellion, before restoring their power to govern us. *His* wisdom and prudence are to be our sufficient guarantee! He further says: "And while I am also unprepared to declare that the free-state constitutions adopted and installed in Louisiana and Arkansas shall be set aside and held for naught, thereby repelling and discouraging the loyal citizens who have set them up as to further effort."

That is to say, the President persists in recognizing those shadows of governments in Arkansas and Louisiana which Congress formally declared should not be recognized—whose Representatives and Senators were recalled by formal vote of both Houses of Congress—which it was declared formally should have no electoral vote for President and Vice-President.

They are mere creatures of his will. They are mere oligarchies imposed on the people by military orders under the form of an election, at which generals, provost marshals, soldiers and camp followers were the chief actors, assisted by a handful of resident citizens, and urged on to premature action by private letters from the President.

In neither Louisiana nor Arkansas before General Banks' defeat

did the United States control half the territory or half the population. In Louisiana General Banks' proclamation frankly declared "The fundamental law of the state is martial law."

On that foundation of freedom he erected what the President calls "the free constitution and government of Louisiana." But of this state, whose fundamental law was martial law, only sixteen parishes out of forty-eight parishes were held by the United States; and in five of the sixteen we held only our war camps. The eleven parishes we substantially held had 233,185 inhabitants; the residue of the state not held by us, 575,617.

At the farce called an election, the officers of General Banks returned that 11,346 ballots were cast; but whether by any lawful authority or by whom, the people of the United States have no legal assurance, but it is probable that 4000 were cast by soldiers or employes of the United States, military or municipal, but none according to law, state or national, and 7000 represented the State of Louisiana. Such is the free constitution and government of Louisiana, and it is like that of Arkansas. Nothing but the failure of a military expedition deprived us of a like one in the swamps of Florida; and before the Presidential election, like ones may be organized in every rebel state where the United States has a camp.

The President by preventing this bill from becoming a law, holds the electoral votes of the rebel states at the dictation of his personal ambition. If those votes turn the balance in his favor, is it to be supposed that his competitor, defeated by such means, will acquiesce? If the rebel majority assert their supremacy in those states and send votes which elect an enemy of the government will we not repel his claims? And is not that civil war for the presidency inaugurated by the votes of rebel states?

Seriously impressed with these dangers Congress, the proper constitutional authority, formally declared that there are no state governments in the rebel states, and provided for their erection at a proper time, and both the Senate and the House of Representatives rejected the Senators and Representatives chosen under the authority of what the President calls the free constitution and government of Arkansas. The President's proclamation "holds for naught" this judgment and discards the authority of the Supreme Court and strides headlong towards the anarchy his proclamation of December 8 inaugurated.

If electors for President be allowed to be chosen in either of these states a sinister light will be cast on the motives which induced the President to "hold for naught" the will of Congress rather than his government in Louisiana and Arkansas. That judgment of Congress which the President defies was the exercise of an authority exclusively vested in Congress by the Constitution, to determine what is the established government in a state, and in its own nature and by the highest judicial authority binding on all other departments of the government. The Supreme Court has formally declared that under the Fourth Article of the Constitution, requiring the United States to guarantee to every state a republican form of government, "it rests with Congress to decide what is the established one in any state," and "when the Senators and Representatives of a state are admitted into the councils of the Union the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional author-

ity and its decision is binding on every other department of the government and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and as no Senators and Representatives were elected under the authority of the governments of which Mr. Dorr was the head, Congress was not called upon to decide the controversy. Yet the right to decide it is placed there."

Even the President's proclamation of the 8th of December, formally declares that "whether members sent to Congress from any state shall be admitted to seats constitutionally rests exclusively with the respective Houses, and not to any extent with the Executive." And that is none the less true because wholly inconsistent with the President's assumption in the proclamation of the right to institute and recognize state governments in the rebel states, not because that the President is unable to perceive that his recognition is a nullity if it be not conclusive on Congress. Under the Constitution, the right to Senators and Representatives is inseparable from a state government. If there be a state government, the right is absolute. If there be no state government there can be no Senators or Representatives chosen. The two Houses of Congress are expressly declared to be the sole judges of its own members. When, therefore, Senators and Representatives are admitted, the state government under whose authority they are chosen is conclusively established; when they are rejected its existence is as conclusively denied; and to this judgment the President is bound to submit.

The President proceeds to express his unwillingness "to declare a constitutional competency in Congress to abolish slavery in the states" as another reason for not signing the bill. But the bill nowhere proposes to abolish slavery in the states. The bill did provide that all slaves in the rebel states should be *manumitted.* But as the President had already signed three bills manumitting several classes of slaves in the rebel states, it is not conceived possible that he entertained any scruples touching *that* provision of the bill respecting which he is silent. He had already himself assumed the right by proclamation to free much the larger number of slaves in the rebel states under authority given him by Congress to use the military power to suppress the rebellion; and it is quite unconceivable that the President should think Congress could vest in him a discretion it could not itself exercise. It is the more unintelligible from the fact that, except in respect to a small part of Virginia and Louisiana, the bill covered only what the proclamation covered—added a congressional title and judicial remedies by law to the disputed title under the proclamation—to perfect the work the President professed to be so anxious to accomplish.

Slavery as an institution can be abolished by a change of the Constitution of the United States or of the law of the states; and this is the principle of the bill. It required the new constitutions of the states to provide for that prohibition; and the President, in the face of his own proclamation, does not venture to object to insisting on that condition; nor will the country tolerate its abandonment, yet he defeated the only provision imposing it. But when he describes himself, in spite of this great blow at emancipation, as "sincerely hoping and expecting that a constitutional amendment abolishing slavery throughout the nation may be adopted," we curiously inquire on what his expectation rests, after the vote of the House of Rep-

resentatives at the recent session, and in the face of the political complexion of more than enough of the states to prevent the possibility of its adoption within any reasonable time; and why he did not indulge his sincere hopes with so large an installment of the blessing as his approval of the bill that would have secured it?

After this assignment of his reason for preventing the bill from becoming a law, the President proceeds to declare his purpose to execute it as a law by his plenary dictatorial power. He says: "Nevertheless, I am fully satisfied with the system for restoration contained in the bill as one very proper for the loyal people of any state choosing to adopt it; and that I am, and at all times shall be, prepared to give Executive aid and assistance to any such people, as soon as military resistance to the United States shall have been suppressed in any such state, and the people thereof shall have sufficiently returned to their obedience to the Constitution and laws of the United States—in which case military governors will be appointed, with directions to proceed according to the bill."

A more studied outrage on the legislative authority of the people has never been perpetrated. Congress passed a bill; the President refused to approve it, and then by proclamation puts as much of it in force as he sees fit, and proposes to execute those parts by officers unknown to the laws of the United States, and not subject to the confirmation of the Senate. The bill directed the appointment of provisional governors by and with the advice and consent of the Senate. The President, after defeating the law, proposes to appoint, without authority of law and without the advice and consent of the Senate, military governors for the rebel states! He has already exercised his dictatorial usurpation in Louisiana, and defeated the bill to prevent its limitation.

Henceforth we must regard the following precedent as the presidential law of the rebel states:

Executive Mansion, Washington, March 15, 1864.

His Excellency, Michael Hahn, Governor of Louisiana:

Until further orders you are hereby invested with the powers exercised hitherto by the military governor of Louisiana.

Yours,

ABRAHAM LINCOLN.

This Michael Hahn is no officer of the United States; the President, without law, without the advice or consent of the Senate, by a private note not even countersigned by the Secretary of State, makes him dictator of Louisiana!

The bill provided for the civil administration of the laws of the state, but it should be in a fit temper to govern itself, repealing all laws recognizing slavery, and making all men equal before the law. These beneficent provisions the President has annulled. People will die and marry and transfer property, and buy and sell; and to these acts of civil life courts and officers of the law are necessary. Congress legislated for these necessary things and the President deprives them of the protection of the law! Whatever is done will be at his will and pleasure by persons responsible to no law, and more interested to secure the interests and execute the will of the President than of the people; and the will of Congress is to be "held for naught" unless the loyal people of rebel states should prefer the stringent bill to the easy proclamation, still the registration will be

made under no legal sanction; it will give no assurance that a majority of the people of the states have taken the oath; if administered, it will be without legal authority and void, and no indictment will lie for false swearing at the election, or for admitting bad or rejecting good votes; it will be the farce of Louisiana and Arkansas acted over again, under the forms of this bill but without authority of law. But when we come to the guarantees of the future peace which Congress meant to enact, the form as well as the substance of the bill must yield to the President's will that none should be imposed.

It was the solemn resolve of Congress to protect the loyal men of the nation against three great dangers: (1) the return to power of the guilty leaders of the rebellion; (2) the continuance of slavery; and (3) the burden of the rebel debt. Congress required assent to these provisions by the convention of the state; and if it refused, it was to be dissolved. The President "holds for naught" that resolve of Congress because he is "unwilling to be inflexibly committed to any one plan of restoration," and the people of the United States are not to be allowed to protect themselves unless their enemies agree to it.

The order to proceed according to the bill is therefore merely at the will of the rebel states; and they have the option to reject it, accept the proclamation of the 8th of December last, and demand the President's recognition! Mark the contrast! The bill required a majority, the proclamation is satisfied with one-tenth; the bill required one oath, the proclamation requires another; the bill ascertains voters by registering, the proclamation by guess; the bill exacts adherence to existing territorial limits, the proclamation admits of others; the bill governs the rebel states by law, the proclamation commits them to the lawless discretion of military governors and provost marshals; the bill forbids electors for President, the proclamation and defeat of the bill threaten us with civil war for the admission or the exclusion of such votes; the bill exacts the exclusion of dangerous enemies from power and the relief of the nation from the rebel debt, and the prohibition of slavery forever, so that the supression of the rebellion will double our resources to bear or pay the national debt, free the masses from the old domination of rebel leaders, and eradicate the cause of the war; the proclamation secures neither of these guarantees. It is silent respecting the rebel debt and the exclusion of rebel leaders; leaving slavery exactly where it was by law at the outbreak of the rebellion, and adds no guarantee even of the freedom of the slaves he undertook to manumit.

It is summed up in an illegal oath, without sanction and therefore void. The oath is to support all proclamations of the President during the rebellion having reference to the slaves. Any government is to be accepted at the hands of one-tenth of the people not contravening that oath. Now that oath neither secures the abolition of slavery nor adds any security to the freedom of the slaves the President has declared free. It does not secure the abolition of slavery; for the proclamation of freedom merely professes to free certain slaves while it recognizes the institution. Every constitution of the rebel states at the outbreak of the rebellion may be adopted without the change of a letter, for none of them contravenes the proclamation; none of them established slavery.

It adds no security to the freedom of the slaves; for their title is the proclamation of freedom. If it be unconstitutional, an oath to support it is void. Whether constitutional or not, the oath is without authority of law and therefore void. If it be void and observed it exacts no enactment by the state either in law or constitution, to add a state guarantee to the proclamation title; and the right of the slaves to freedom is an open question before the state courts on the relative authority of the state law and the proclamation. If the oath binds the one-tenth who take it, it is not exacted of the other nine-tenths who succeed to the control of the government; so that it is annulled instantly by the act of recognition.

What the state courts would say of the proclamation who can doubt? But the master would not go to court—he would simply seize his slaves.

What the Supreme Court would say, who can tell? When and how is the question to get there? No *habeas corpus* lies for him in the United States Court; and the President defeats this bill for the extension of the writ to his case.

Such are fruits of this rash and fatal act of the President—a blow at the friends of his Administration, at the rights of humanity, and at the principles of republican government.

The President has greatly presumed on the forbearance which the supporters of his Administration have so long practiced, in view of the arduous conflict in which we are engaged, and the reckless ferocity of our political opponents. But he must understand that our support is of a cause and not of a man; that the authority of Congress is paramount and must be respected; that the whole body of the Union men in Congress will not submit to be impeached by him of rash and unconstitutional legislation; and if he wishes our support he must confine himself to his Executive duties—to obey and execute, not make the laws—to suppress by arms armed rebellion, and leave political recognition to Congress.

If the supporters of the government fail to insist on this they become responsible for the usurpations which they fail to rebuke, and are justly liable to the indignation of the people whose rights and security, committed to their keeping, they sacrifice.

Let them consider the remedy of these usurpations, and, having found it, fearlessly execute it.

B. F. WADE,
Chairman, Senate Committee.

H. WINTER DAVIS,
Chairman, Committee of House of Representatives on the Rebellious States.

APPENDIX B

INTERESTING DECISIONS BY THE UNITED STATES SUPREME COURT—CIVIL RIGHTS AND OTHERS

(The Language is from Syllabi of the Cases.)

The clause in the Constitution of the United States relative to fugitives from labor, manifestly contemplated a positive and unqualified right on the part of the owners of slaves, which no state law or regulation can in any way qualify, regulate, control or restrain; and any law which interrupts, limits, delays or obstructs the right of the owner to the immediate command of his service or labor, operates *pro tanto* to discharge the slave therefrom. The question can never be how much he is discharged from, but whether he is discharged from any at all by the natural and necessary operation of the state laws or state regulations. The question is not of quantity or degree, but of withholding or controlling the incidents of a positive right.

The owner of a slave has the same right to take or seize him in a state to which he has fled that he had in the state from which he escaped. The owner of a slave has the right to seize and take him wherever found; wherever he can without a breach of the peace or illegal violence.

The power of legislation in relation to fugitives from labor is exclusively in the national legislature (Sturgis vs. Crowinshield, 4 Wh. 122).

The right to seize a fugitive slave and the duty to deliver him up in whatever state he is found is, under the Constitution, recognized as a positive right and duty pervading the whole Union with equal and supreme force uncontrolled and uncontrollable by state sovereignty or state legislation.

The right and duty are co-extensive and uniform in remedy and operation throughout the whole Union. The owner has the same security, the same remedial justice, and the same exemption from state regulation and control through however many states he may pass in transition to his domicile. The act of the Pennsylvania Legislature is unconstitutional and void.

(1842) Prigg vs. Pennsylvania, 16 Peters p. 500, Opinion by Story, J.

Note—Compare this argument and decision with later Supreme Court decisions as to the respective powers of the national and state legislatures—the Civil Rights cases for instance. The decision in the above case by Judge Story arose as follows: In 1826 the Legislature of Pennsylvania passed an Act as follows: "That if any person shall by force or violence, take, carry away or cause to be taken or carried away, or shall by fraud or false pretense seduce or cause to be seduced any Negro or mulatto from any part or parts of this Commonwealth, with the design or intention of selling and disposing of or causing to be sold and disposed of or keeping and detaining or causing to be kept and detained, any Negro, etc., as a slave for life or for any term whatever, every such person or persons, his or their aiders or abettors, shall on conviction thereof, be deemed guilty of a felony and shall forfeit and pay at the discretion of the Court a sum not less than five hundred dollars nor more than one thousand dollars—one-half to be paid to the persons who shall

prosecute the same and the other half to the Commonwealth; moreover shall be sentenced to undergo a servitude for any term of years not less than seven nor more than twenty-one years: Provided that fugitive slaves shall be returned on petition to any judge or justice of the peace, in writing by the party claiming, setting up the fact of his ownership and the escape. The fugitive to be arrested and brought before the judge or justice of the peace. When the claim is presented by an agent or attorney, the same to be accompanied by an affidavit of the owner which affidavit is to be certified before some person authorized to administer oaths in the county where said owner resides. The judge or justice of the peace to certify the record to the Court of Quarter Sessions within ten days, when the case will be duly tried. Provided, that no one claimed as a slave shall be removed from the state except in accordance with this Act." The people of Pennsylvania had been greatly annoyed and often distressed by slave-holders who were in the habit of coming into the state in quest of their alleged slaves. They or hired thugs would at times seize any colored person they could lay their hands on, and without any one to question them, would take them and sell them to slave traders that infested the borders of Maryland. To stop this disgraceful practice, the state passed this law for the purpose of compelling those claiming persons as their slaves to at least prove their claims before a competent court. But the Supreme Court said that this law was unconstitutional. See Civil Rights Case infra XXIX.

A free Negro whose ancestors were brought to this country and sold as a slave is not a "citizen" within the meaning of the Constitution of the United States. When the Constitution was adopted they were not regarded in any of the states as members of the community which constituted the state and were not numbered among "the people or citizens," consequently the special rights and immunities guaranteed to citizens, do not apply to them. And not being citizens within the meaning of the Constitution, are not entitled to sue in that character in a court of the United States. Since the adoption of the Constitution, no state can make any person a citizen of the United States nor entitle them (him) to the rights and immunities secured to citizens.

(1857) (Dred) Scott vs. Sanford, 19 Howard, 395. Opinion by Taney, C. J.; Curtis and McLean, JJ., dissenting.

Note—This is the famous or infamous Dred Scott Decision. The facts of the case were as follows: Dr. Sanford moved to Missouri, taking with him among other things, Dred Scott, a slave. Under the compromise of 1820, slavery was excluded from a certain part of Missouri; on reaching this territory Scott petitioned for a writ of habeas corpus from the United States Court to determine whether or not he might rightfully claim his freedom. The writ of habeas corpus is a common law writ and is available to all citizens under the provisions of the United States Constitution. The whole case, therefore, turned on the point as to whether or not Scott was a "citizen;" if he was, he had a right to sue out the writ and then the question might be raised as to the legality of his detention; if he was not a "citizen," then the legality of his detention need not be considered. The learned court argued that the term citizen implied the right of one to enjoy all the civil and political advantages of the country of which he may be a citizen. It was then asserted that Negroes were nowhere permitted to enjoy any advantages of citizenship as a matter of legal right, in fact, had no rights of any kind that a white man was bound to respect.

The dissenting justices showed that in parts of the country Negroes had been in the exercise and enjoyment of the highest privileges of citizenship since the time of the Revolution. This decision, however, raised a great question and one whose final determination by the adoption of the Fourteenth Amendment in which citizenship is defined, has been of greatest benefit to the country especially in view of our heterogenous population.

The main purpose of the last three (Thirteenth, Fourteenth and Fifteenth) Amendments to the Constitution was the freedom of the African race, the security and perpetuation of that freedom, and

their protection from the oppression of the white man who had formerly held them in slavery. In giving construction to these articles it is necessary to keep this main purpose steadily in view. The purpose of the first clause of the Fourteenth Amendment was primarily intended to confer citizenship upon the Negro race; secondly to give definitions of citizenship of the United States and citizenship of the states, and recognizes and distinguishes between citizenship of the United States and citizenship of the states. The latter embraces generally those fundamental civil rights for the security and establishment of which organized society is instituted, and they remain, with certain exceptions mentioned in the Federal Constitution, under the care of state governments. The privileges and immunities of citizens of the United States are those which arise out of the nature and character of the national government, the provisions of the Constitution, or its laws and treaties made in pursuance thereof; and it is these which are placed under the protection of Congress by this clause of the Fourteenth Amendment. The clause which forbids a state to deny any persons the equal protection of the laws was clearly intended to prevent the hostile discrimination against the Negroes so familiar in states where they had been held as slaves, and for this purpose, the clause confers ample power upon Congress to secure their rights and equality before the law.

(1873) Opinion by Miller, J. The Slaughter House Cases, 16 Wallace 36.

Note—The learned court said at page 78, that "it was not the purpose of the Fourteenth Amendment to transfer to Congress the protection of the civil rights, etc., hitherto under the protection of the states. The privileges, etc., referred to in the amendment being such as belong to the states, they are under state control."

The case has no immediate connection with the Negro question at all, having been brought to determine whether or not a state (Louisiana) might, in view of the Thirteenth and Fourteenth Amendments, compel the citizens of a community (New Orleans) to patronize the establishment of a slaughter house company that had been given a monopoly of the business of slaughtering animals for the market. The plaintiff undertook to show that such a regulation was unconstitutional, being in violation of the amendments named. The court held that it was not, and that the state might properly enforce the law.

Bradley, C. J., Swayne and Fields, JJ., dissented.

Words of the charter of a railroad company granted by Act of Congress, to the effect that no person shall be excluded from cars on account of race, color, etc. Held: That this meant that persons of color should travel in the same cars that white persons used, and along with them in such cars; and that the Act was not satisfied by the company providing cars assigned exclusively to colored people though as good as those assigned exclusively to white people, and should be the very cars that were at times assigned exclusively to white people.

(1873) R. R. Co. vs. Brown, 17 Wallace 445. Opinion by Davis, J.

The adoption of the Fifteenth Amendment rendered inoperative

a provision in the existing constitution of a state whereby the right of suffrage was limited to the white race. The presumption should be indulged in the first instance that a state recognizes as binding on all her citizens and in every department of her government, an amendment to the Constitution of the United States from the time of its adoption, and her duty to enforce it within her limits without reference to any inconsistent provision in her own constitution or statutes.

(1880) Neal vs. Delaware, 103 U. S. 370.

Note—In connection with the Neal case, the Supreme Court incidentally construed the following section of the Civil Rights Act of March 1, 1875, 18 Stat. at Large, Pt. 3, p. 335: "No citizen possessing otherwise qualifications shall be disqualified from service as grand or petit jurors in any court of the United States or of any state on account of color, race," etc.

Neal was a Negro charged with a felony in the State of Delaware, and petitioned for the removal of his case to the United States Circuit Court because Negroes were excluded from service as jurors in the state courts. The Supreme Court denied the prayer on the ground that the state had passed no law denying to Negroes the right to serve as jurors. "But the exclusion of persons from service as jurors because of race, etc., if done without authority derived from the Constitution of the United States is a violation of the person's rights under the Constitution."

The other statute involved in this case is as follows: "When in any civil suit or criminal prosecution commenced in any state court for any cause whatever, against any person who is denied or can not enforce in the judicial tribunal of the state or in the part of the state where such prosecution is pending, any right secured to him by any law providing for the equal civil rights of the citizens of the United States, such suit or prosecution may be, upon petition of such defendant filed in the said state court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, removed for trial to the next Circuit Court to be held in the district where it is pending."

Neal based his case in the Supreme Court on those two statutes or laws passed by Congress, but the court declined to sustain the contention.

The Fourteenth Amendment is one of a series of constitutional amendments having a common purpose of securing to a recently emancipated race which has been held in slavery through many generations, all of the civil rights that the superior race enjoy, and to give to it the protection of the general government in the enjoyment of such rights wherever they should be denied by the states. The amendment not only gave citizenship to persons of color, but denied to any state the power to withhold from them the equal protection of the laws and invested Congress with the power to enforce its provisions by appropriate legislation. The amendment confers the positive right of exemption from unfriendly legislation against them as colored; exemption from discriminations imposed by public authority which imply legal inferiority in civil society, lessen the security of their rights and are steps towards reducing them to the condition of a subject race. Any statute that denies to colored men the right to serve as jurors denies to them the equal protection of the laws (and is unconstitutional). The very idea of a jury is that of a body of men composed of the peers or equals of the person whose rights it is selected to determine. And where the statutes of a state permit (juries of white men) to be chosen indiscriminately for trial of the accused of their race and at the same time permit or

require such discrimination against colored men, the latter are not equally protected by the laws with the former.

(1879) Strauder vs. West Va., 100 U. S. 303.

Though a mixed jury in a particular case is not essential to the equal protection of the laws, colored men are entitled to the right not to be excluded because of their color, etc.

(1879) Va. vs. Rivers, 100 U. S. 315.

The inhibition contained in the Fourteenth Amendment means that no agency of the state or of the officers or agents by whom her powers are exerted shall deny to any person within her jurisdiction the equal protection of the laws. Whoever by virtue of his public position under the state government deprives another of his life, liberty or property without due process of law, violates this inhibition and, as he acts in the name of the state and for the state and is clothed with her power, his act is her act. Otherwise the inhibition is meaningless. Congress is invested with power to enforce by appropriate legislation this provision, and such legislation must act not on an abstract thing denominated a state, but upon persons who are its agents in the denial of the rights intended to be secured.

(1879) Ex parte Virginia, 100 U. S. 339.

The government of states and of the United States are distinct, each having its own citizens who owe it allegiance and whose rights within its jurisdiction it must protect * * * * and rights of citizens of one may be different from those of the other. The Government of the United States can not grant or secure to its citizens rights or privileges which are not expressly or by implication, placed under its jurisdiction. All that can not be so granted or secured are left to the exclusive jurisdiction of the states. Sovereignty for the protection of the life and personal liberty within the respective states rests alone with the states. The Fourteenth Amendment prohibits a state from depriving any person of life, liberty or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws, but it adds nothing to the rights of one citizen as against the other. It simply furnishes an additional guaranty against any encroachments by the state upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all of its citizens in the enjoyment of equal rights was originally assumed by the states and still remains there. The only obligation resting upon the United States is to see that the states do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty. The right to vote in the states comes from the states; but the right of exemption from prohibited discrimination comes from the United States.

(1875) U. S. vs. Cruikshank, et al. 92 U. S. 542 Opinion by Waite, C. J.

Note—Cruikshank alleged that he had been hindered and prevented from voting by reason of an unlawful conspiracy and brought his action under the following statute, being Section 6 of the Act of May 31, 1870:

"That if any two or more persons shall bind together, or go in disguise upon

the public highway, or upon the premises of another with intent to violate the provisions of this Act, or injure, oppress, threaten or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held to be guilty of a felony and upon conviction thereof shall be fined or imprisoned or both at the discretion of the court, the fine not to exceed $500, and the imprisonment not to exceed ten years; and shall moreover be hereafter ineligible to and disabled from holding any office of trust, etc., under the United States."

The court held that the national government could afford the plaintiff no relief under the circumstances above mentioned notwithstanding the statute quoted; that such matters rested with the states exclusively.

The Fifteenth Amendment does not confer the rights of suffrage, but invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of race, color, etc., and empowers Congress to enforce the right by appropriate legislation. The power of Congress to legislate in matters of voting in the states rests upon this amendment only and can be exercised by providing for punishment only when the wrongful refusal to receive the vote of a qualified voter is on account of race, color or pervious condition of servitude. The Third and Fourth Sections of the Act of May 31, 1870, are, therefore, unconstitutional, being beyond the limits of the Fifteenth Amendment.

(1875) U. S. vs. Reese, 92 U. S. 214. Hunt, J., dissented.

Note—Sections 3 and 4 of the Act referred to were in the following language: "That whenever by the authority of the constitution or laws of any state or territory, any act shall be required to be done by any citizen as a prerequisite to qualify or enable him to vote, the offer of any such citizen to perform the act required as aforesaid shall, if he fail to carry it into execution by reason of the wrongful act or omission of the officer or person charged with the duty of receiving or permitting such performance or offer to perform or acting thereon, be deemed and held to be performance in law of such act; and the person so offering and being otherwise qualified, shall be entitled to vote * * * * as though such act were performed. And any judge, inspector or other officer of election, whose duty it is or shall be, to receive, register, count, report and give effect to the vote of such citizen, who shall wrongfully refuse to count and certify the same, shall forfeit and pay the sum of $500 to the person aggrieved or be imprisoned not less than one month nor more than on year."

Section 4: "That if any person by force, bribery, threats or intimidation or other illegal means, shall hinder, delay, prevent or obstruct, or shall bind and confederate with others to hinder, delay, etc., any citizen from doing the act required to be done to qualify him to vote or from voting at any election, such person for every such offense, shall forfeit the sum of $500 to the person aggrieved and shall also, upon conviction thereof be guilty of a misdemeanor and fined $500, or be imprisoned for not less than one month nor more than one year."

Provision in a state code prohibiting white persons and Negroes living together in adultery or fornication is not in conflict with the Constitution of the United States, although it prescribes penalties more severe than those to which the parties would be subject if they were of the same race.

Pace vs. Alabama, 106 U. S. 583.

The Fourteenth Amendment is a prohibition upon states only, and legislation authorized to be adopted by Congress for enforcing it is

not direct legislation on matters respecting which states are prohibited from making or enforcing certain laws or doing certain acts, but corrective legislation such as may be necessary for the proper counteracting and redressing the effect of such laws or acts.

The First and Second Sections of the Civil Rights Act of March 1, 1875, are unconstitutional enactments as applied to the several states, not being authorized either by the Thirteenth or Fourteenth Amendments.

(1883) Civil Rights Cases, 109 U. S. 3. Opinion by Bradley, J.; Harlan dissented.

Note—In the course of his argument and reasoning in arriving at this conclusion, the learned justice said: "Civil rights such as are guaranteed by the Constitution can not be impaired by an individual unsupported by state authority in its laws, customs or judicial or executive proceedings. The wrongful act of an individual unsupported by such authority is simply a private wrong or a crime of the individual; an invasion of his rights 'tis true, whether they effect his person, his property or his reputation; but if they are not sanctioned in some way by the state or done under its authority, his rights remain in full force and may presumably be vindicated by resort to the laws of the state for redress."

Sections 1 and 2 of the Civil Rights Act are the well-known provisions intended to secure to Negroes the indiscriminate privileges of accommodations at hotels, theatres, etc., as well as in matters of travel on conveyances of common carriers.

APPENDIX C

INTERESTING DECISIONS BY SOME OF THE STATE COURTS

Although there be in a State's Bill of Rights provision making all of its citizens equal before the law, a law afterwards passed making it a penal offense for a Caucasian and a Negro to marry, is not unconstitutional (neither the state nor the United States Constitution being offended thereby). Each state has the right to declare how and whom its citizens shall marry.

Francois vs. State, 9 Tex. App. 144.
Ex parte Kinney, 3 Hughes (Va.) C. Ct. 9.

Regulations requiring white and colored passengers to occupy separate cars or compartments of railroad car are not unconstitutional.

Ex parte Plessy, 7 Am. R. & Corp. Repts. 383.
Clinton vs. R. R. Co., 21 S. W. (Mo.) 457.

Note—For a long line of these decisions by various courts see Lawyers Reports Annotated Vol. XVIII. Decisions often turn on the point of distinction between "equality" and "identity." Where the statutes require railroads, etc., to give all passengers "equal" accommodations, or even "identical" accommodations, courts have usually held that it does not mean that they should have the "same" accommodations, etc.

COMMENT ON SCHOOL DECISIONS, ETC.

The question of legality of maintaining separate public schools has been before the courts many times, and it has been uniformly held by the highest courts of several states that there is nothing in the Fourteenth Amendment to prevent the establishment of separate schools for the education of the colored race; and that it is purely a matter of state regulation.

People vs. Gallagher, 93 N. Y. 438.
State vs. McCann, 21 Ohio 129.
Cory vs. Carter, 48 Indiana 327.
Ward vs. Flood, 48 Cal. 36.
United States vs. Buntin, 10 Fed. Reps. 730.

Some states have passed laws specifically abolishing separate schools, as in Pennsylvania. But even here local regulations or customs in communities with a large colored population tend to encourage the maintenance of separate schools.

The Kansas Constitution of 1876 provided in Sections 2 and 9 of Article XI, in substance as follows: That in cities of a

certain class there shall be established and maintained a system of schools free to all children residing in such cities within a specified age; and the Board of Education was given power to make their own rules and regulations, subject to the provisions of that article, to organize and maintain a system of graded schools, and to establish a high school, etc. The Board of Education of one of the cities within the provisions of the act undertook to exclude Negro children from a certain school. Upon appeal to the courts it was held: "That until the legislature clearly confers power upon the school boards of such cities in Kansas, to establish separate schools for the education of colored and white children, no such power exists."

Tinon vs. Board of Education, 26 Kan. 1; Knox vs. same in 1891.

The Constitution of Iowa provided for the education of all the children of the state within certain ages without distinction of color. (Laws of Iowa, 1862, Ch. 192, Sec. 12.)

An Iowa school board undertook to exclude a Negro from a certain public school but on appeal to the courts it was held: "That school boards have no power or discretion to compel colored children to attend separate schools."

Clark vs. School Board, 24 Iowa 266.
Smith vs. School Board, 40 Iowa 518.

"All legislation which discriminates against any particular race or class of persons is in violation of the Constitution of the United States.

"Taxation for the purpose of education should be provided for by general laws, applicable to all classes and races alike, all children of the United States being entitled to an equal share of the proceeds of the common school fund and of all state taxes for the purposes of education."

Dawson vs. Lee, 83 Ky. 50.

"A law providing that the funds raised by taxation from property belonging to white people shall be used for the education of white children, and those raised from taxation of property belonging to Negroes shall be used for the education of Negroes is unconstitutional."

Markham vs. Manning, 96 N. C. 1.

GENERAL INDEX

Index

C

D